

115TH CONGRESS
2^D SESSION

H. R. 5105

AN ACT

To establish the United States International Development
Finance Corporation, and for other purposes.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Better Utilization of Investments Leading to Develop-
 4 ment Act of 2018” or the “BUILD Act of 2018”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—ESTABLISHMENT

- Sec. 101. Statement of policy.
- Sec. 102. United States International Development Finance Corporation.
- Sec. 103. Management of Corporation.
- Sec. 104. Inspector General of the Corporation.
- Sec. 105. Independent accountability mechanism.

TITLE II—AUTHORITIES

- Sec. 201. Authorities relating to provision of support.
- Sec. 202. Terms and conditions.
- Sec. 203. Payment of losses.
- Sec. 204. Termination.

TITLE III—ADMINISTRATIVE AND GENERAL PROVISIONS

- Sec. 301. Operations.
- Sec. 302. Corporate powers.
- Sec. 303. Maximum contingent liability.
- Sec. 304. Corporate funds.
- Sec. 305. Coordination with other development agencies.

TITLE IV—MONITORING, EVALUATION, AND REPORTING

- Sec. 401. Establishment of risk and audit committees.
- Sec. 402. Performance measures, evaluation, and learning.
- Sec. 403. Annual report.
- Sec. 404. Publicly available project information.
- Sec. 405. Engagement with investors.
- Sec. 406. Notification of support to be provided by the Corporation.

TITLE V—CONDITIONS, RESTRICTIONS, AND PROHIBITIONS

- Sec. 501. Limitations and preferences.
- Sec. 502. Additionality and avoidance of market distortion.
- Sec. 503. Prohibition on support in sanctioned countries and with sanctioned
 persons.
- Sec. 504. Penalties for misrepresentation, fraud, and bribery.

TITLE VI—TRANSITIONAL PROVISIONS

- Sec. 601. Definitions.
- Sec. 602. Reorganization plan.
- Sec. 603. Transfer of functions.
- Sec. 604. Termination of Overseas Private Investment Corporation and other
supereeded authorities.
- Sec. 605. Transitional authorities.
- Sec. 606. Savings provisions.
- Sec. 607. Other terminations.
- Sec. 608. Incidental transfers.
- Sec. 609. Reference.
- Sec. 610. Conforming amendments.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE CONGRESSIONAL COMMIT-
4 TEES.—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Foreign Relations
7 and the Committee on Appropriations of the
8 Senate; and

9 (B) the Committee on Foreign Affairs and
10 the Committee on Appropriations of the House
11 of Representatives.

12 (2) LESS DEVELOPED COUNTRY.—The term
13 “less developed country” means a country with a
14 low-income economy, lower-middle-income economy,
15 or upper-middle-income economy, as defined by the
16 International Bank for Reconstruction and Develop-
17 ment and the International Development Association
18 (collectively referred to as the “World Bank”).

1 (3) PREDECESSOR AUTHORITY.—The term
2 “predecessor authority” means authorities repealed
3 by title VI.

4 (4) QUALIFYING SOVEREIGN ENTITY.—The
5 term “qualifying sovereign entity” means—

6 (A) any agency or instrumentality of a for-
7 eign state (as defined in section 1603 of title
8 28, United States Code) that has a purpose
9 that is similar to the purpose of the Corpora-
10 tion as described in section 102(b); or

11 (B) any international financial institution
12 (as defined in section 1701(c) of the Inter-
13 national Financial Institutions Act (22 U.S.C.
14 262r(c))).

15 **TITLE I—ESTABLISHMENT**

16 **SEC. 101. STATEMENT OF POLICY.**

17 It is the policy of the United States to facilitate mar-
18 ket-based private sector development and economic growth
19 in less developed countries through the provision of credit,
20 capital, and other financial support—

21 (1) to mobilize private capital in support of sus-
22 tainable, broad-based economic growth, poverty re-
23 duction, and development through demand-driven
24 partnerships with the private sector that further the
25 foreign policy interests of the United States;

1 (2) to finance development that builds and
2 strengthens civic institutions, promotes competition,
3 and provides for public accountability and trans-
4 parency;

5 (3) to help private sector actors overcome iden-
6 tifiable market gaps and inefficiencies without dis-
7 torting markets;

8 (4) to achieve clearly defined economic and so-
9 cial development outcomes;

10 (5) to coordinate with institutions with pur-
11 poses similar to the purposes of the Corporation to
12 leverage resources of those institutions to produce
13 the greatest impact;

14 (6) to provide countries a robust alternative to
15 state-directed investments by authoritarian govern-
16 ments and United States strategic competitors using
17 high standards of transparency and environmental
18 and social safeguards, and which take into account
19 the debt sustainability of partner countries;

20 (7) to leverage private sector capabilities and
21 innovative development tools to help countries tran-
22 sition from recipients of bilateral development assist-
23 ance toward increased self-reliance; and

24 (8) to complement and be guided by overall
25 United States foreign policy, development, and na-

1 tional security objectives, taking into account the
2 priorities and needs of countries receiving support.

3 **SEC. 102. UNITED STATES INTERNATIONAL DEVELOPMENT**
4 **FINANCE CORPORATION.**

5 (a) ESTABLISHMENT.—There is established in the
6 Executive branch the United States International Devel-
7 opment Finance Corporation (in this Act referred to as
8 the “Corporation”), which shall be a wholly owned Gov-
9 ernment corporation for purposes of chapter 91 of title
10 31, United States Code, under the foreign policy guidance
11 of the Secretary of State.

12 (b) PURPOSE.—The purpose of the Corporation shall
13 be to mobilize and facilitate the participation of private
14 sector capital and skills in the economic development of
15 less developed countries, as described in subsection (c),
16 and countries in transition from nonmarket to market
17 economies, in order to complement the development assist-
18 ance objectives, and advance the foreign policy interests,
19 of the United States. In carrying out its purpose, the Cor-
20 poration, utilizing broad criteria, shall take into account
21 in its financing operations the economic and financial
22 soundness and development objectives of projects for
23 which it provides support under title II.

24 (c) LESS DEVELOPED COUNTRY FOCUS.—

1 (1) IN GENERAL.—The Corporation shall
2 prioritize the provision of support under title II in
3 less developed countries with a low-income economy
4 or a lower-middle-income economy.

5 (2) SUPPORT IN UPPER-MIDDLE-INCOME COUN-
6 TRIES.—The Corporation shall restrict the provision
7 of support under title II in a less developed country
8 with an upper-middle-income economy unless—

9 (A) the President certifies to the appro-
10 priate congressional committees that such sup-
11 port furthers the national economic or foreign
12 policy interests of the United States; and

13 (B) such support is likely to be highly de-
14 velopmental or provide developmental benefits
15 to the poorest population of that country.

16 **SEC. 103. MANAGEMENT OF CORPORATION.**

17 (a) STRUCTURE OF CORPORATION.—There shall be
18 in the Corporation a Board of Directors (in this Act re-
19 ferred to as the “Board”), a Chief Executive Officer, a
20 Deputy Chief Executive Officer, a Chief Risk Officer, a
21 Chief Development Officer, and such other officers as the
22 Board may determine.

23 (b) BOARD OF DIRECTORS.—

1 (1) DUTIES.—All powers of the Corporation
2 shall vest in and be exercised by or under the au-
3 thority of the Board. The Board—

4 (A) shall perform the functions specified to
5 be carried out by the Board in this Act;

6 (B) may prescribe, amend, and repeal by-
7 laws, rules, regulations, policies, and procedures
8 governing the manner in which the business of
9 the Corporation may be conducted and in which
10 the powers granted to the Corporation by law
11 may be exercised; and

12 (C) shall develop, in consultation with
13 stakeholders and other interested parties, a
14 publicly-available policy with respect to con-
15 sultations, hearings, and other forms of engage-
16 ment in order to provide for meaningful public
17 participation in the Board’s activities.

18 (2) MEMBERSHIP OF BOARD.—

19 (A) IN GENERAL.—The Board shall consist
20 of—

21 (i) the Chief Executive Officer of the
22 Corporation;

23 (ii) the officers specified in subpara-
24 graph (B); and

1 (iii) four other individuals who shall
2 be appointed by the President, by and with
3 the advice and consent of the Senate, of
4 which—

5 (I) one individual should be ap-
6 pointed from among a list of at least
7 five individuals submitted by the ma-
8 jority leader of the Senate after con-
9 sultation with the chairman of the
10 Committee on Foreign Relations of
11 the Senate;

12 (II) one individual should be ap-
13 pointed from among a list of at least
14 five individuals submitted by the mi-
15 nority leader of the Senate after con-
16 sultation with the ranking member of
17 the Committee on Foreign Relations
18 of the Senate;

19 (III) one individual should be ap-
20 pointed from among a list of at least
21 five individuals submitted by the
22 Speaker of the House of Representa-
23 tives after consultation with the chair-
24 man of the Committee on Foreign Af-

1 fairs of the House of Representatives;
2 and

3 (IV) one individual should be ap-
4 pointed from among a list of at least
5 five individuals submitted by the mi-
6 nority leader of the House of Rep-
7 resentatives after consultation with
8 the ranking member of the Committee
9 on Foreign Affairs of the House of
10 Representatives.

11 (B) OFFICERS SPECIFIED.—

12 (i) IN GENERAL.—The officers speci-
13 fied in this subparagraph are the following:

14 (I) The Secretary of State or a
15 designee of the Secretary.

16 (II) The Administrator of the
17 United States Agency for Inter-
18 national Development or a designee of
19 the Administrator.

20 (III) The Secretary of the Treas-
21 ury or a designee of the Secretary.

22 (IV) The Secretary of Commerce
23 or a designee of the Secretary.

1 (ii) REQUIREMENTS FOR DES-
2 IGNEES.—A designee under clause (i) shall
3 be selected from among officers—

4 (I) appointed by the President,
5 by and with the advice and consent of
6 the Senate;

7 (II) whose duties relate to the
8 programs of the Corporation; and

9 (III) who is designated by and
10 serving at the pleasure of the Presi-
11 dent.

12 (C) REQUIREMENTS FOR NONGOVERN-
13 MENT MEMBERS.—A member of the Board de-
14 scribed in subparagraph (A)(iii)—

15 (i) may not be an officer or employee
16 of the United States Government;

17 (ii) shall have relevant experience,
18 which may include experience relating to
19 the private sector, the environment, labor
20 organizations, or international develop-
21 ment, to carry out the purpose of the Cor-
22 poration;

23 (iii) shall be appointed for a term of
24 3 years and may be reappointed for one
25 additional term;

1 (iv) shall serve until the member's
2 successor is appointed and confirmed;

3 (v) shall be compensated at a rate
4 equivalent to that of level IV of the Execu-
5 tive Schedule under section 5315 of title 5,
6 United States Code, when engaged in the
7 business of the Corporation; and

8 (vi) may be paid per diem in lieu of
9 subsistence at the applicable rate under
10 the Federal Travel Regulation under sub-
11 title F of title 41, Code of Federal Regula-
12 tions, from time to time, while away from
13 the home or usual place of business of the
14 member.

15 (3) CHAIRPERSON.—There shall be a Chair-
16 person of the Board designated by the President
17 from among the individuals described in paragraph
18 (2)(A).

19 (4) VICE CHAIRPERSON.—The Administrator of
20 the United States Agency for International Develop-
21 ment, or the designee of the Administrator under
22 paragraph (2)(B)(i)(II), shall serve as the Vice
23 Chairperson of the Board.

1 (5) QUORUM.—Five members of the Board
2 shall constitute a quorum for the transaction of
3 business by the Board.

4 (c) PUBLIC HEARINGS.—

5 (1) PUBLIC HEARINGS BY THE BOARD.—The
6 Board shall hold at least one public hearing each
7 year in order to afford an opportunity for any per-
8 son to present views with respect to whether—

9 (A) the Corporation is carrying out its ac-
10 tivities in accordance with this Act; and

11 (B) any support provided by the Corpora-
12 tion under title II in any country should be sus-
13 pended, expanded, or extended.

14 (2) ADDITIONAL PUBLIC HEARINGS.—In con-
15 junction with each meeting of the Board, the Cor-
16 poration shall hold a public hearing in order to af-
17 ford an opportunity for any person to present views
18 regarding the activities of the Corporation. Such
19 views shall be made part of the record.

20 (d) CHIEF EXECUTIVE OFFICER.—

21 (1) APPOINTMENT.—There shall be in the Cor-
22 poration a Chief Executive Officer, who shall be ap-
23 pointed by the President, by and with the advice and
24 consent of the Senate, and who shall serve at the
25 pleasure of the President.

1 (2) AUTHORITIES AND DUTIES.—The Chief Ex-
2 ecutive Officer shall be responsible for the manage-
3 ment of the Corporation and shall exercise the pow-
4 ers and discharge the duties of the Corporation sub-
5 ject to the bylaws, rules, regulations, and procedures
6 established by the Board.

7 (3) RELATIONSHIP TO BOARD.—The Chief Ex-
8 ecutive Officer shall report to and be under the di-
9 rect authority of the Board.

10 (4) COMPENSATION.—Section 5313 of title 5,
11 United States Code, is amended by adding at the
12 end the following:

13 “Chief Executive Officer, United States Inter-
14 national Development Finance Corporation.”.

15 (e) DEPUTY CHIEF EXECUTIVE OFFICER.—There
16 shall be in the Corporation a Deputy Chief Executive Offi-
17 cer, who shall be appointed by the President, by and with
18 the advice and consent of the Senate, and who shall serve
19 at the pleasure of the President.

20 (f) CHIEF RISK OFFICER.—

21 (1) APPOINTMENT.—Subject to the approval of
22 the Board, the Chief Executive Officer of the Cor-
23 poration shall appoint a Chief Risk Officer, from
24 among individuals with experience at a senior level
25 in financial risk management, who—

1 (A) shall report directly to the Board; and

2 (B) shall be removable only by a majority
3 vote of the Board.

4 (2) DUTIES.—The Chief Risk Officer shall, in
5 coordination with the audit committee of the Board
6 established under section 401, develop, implement,
7 and manage a comprehensive process for identifying,
8 assessing, monitoring, and limiting risks to the Cor-
9 poration, including the overall portfolio diversifica-
10 tion of the Corporation.

11 (g) CHIEF DEVELOPMENT OFFICER.—

12 (1) APPOINTMENT.—Subject to the approval of
13 the Board, the Chief Executive Officer, in conjunc-
14 tion with the Administrator of the United States
15 Agency for International Development, shall appoint
16 a Chief Development Officer, from among individ-
17 uals with experience in development, who—

18 (A) shall report directly to the Board; and

19 (B) shall be removable only by a majority
20 vote of the Board.

21 (2) DUTIES.—The Chief Development Officer
22 shall—

23 (A) coordinate the Corporation's develop-
24 ment policies and implementation efforts with
25 the United States Agency for International De-

1 development, the Millennium Challenge Corpora-
2 tion, and other relevant United States Govern-
3 ment departments and agencies, including di-
4 rectly liaising with missions of the United
5 States Agency for International Development,
6 to ensure that departments, agencies, and mis-
7 sions have training, awareness, and access to
8 the Corporation's tools in relation to develop-
9 ment policy and projects in countries;

10 (B) under the guidance of the Chief Exec-
11 utive Officer, manage employees of the Cor-
12 poration that are dedicated to structuring, mon-
13 itoring and evaluating transactions and projects
14 co-designed with the United States Agency for
15 International Development and other relevant
16 United States Government departments and
17 agencies;

18 (C) authorize and coordinate transfers of
19 funds or other resources to and from such
20 agencies, departments, or missions upon the
21 concurrence of those institutions in support of
22 the Corporation's projects or activities; and

23 (D) coordinate and implement the activi-
24 ties of the Corporation under section 405.

25 (h) OFFICERS AND EMPLOYEES.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this section, officers, employees, and agents
3 shall be selected and appointed by the Corporation,
4 and shall be vested with such powers and duties as
5 the Corporation may determine.

6 (2) ADMINISTRATIVELY DETERMINED EMPLOY-
7 EES.—

8 (A) APPOINTMENT; COMPENSATION; RE-
9 MOVAL.—Of officers and employees employed
10 by the Corporation under paragraph (1), not
11 more than 50 may be appointed, compensated,
12 or removed without regard to title 5, United
13 States Code.

14 (B) REINSTATEMENT.—Under such regu-
15 lations as the President may prescribe, officers
16 and employees appointed to a position under
17 subparagraph (A) may be entitled, upon re-
18 moval from such position (unless the removal
19 was for cause), to reinstatement to the position
20 occupied at the time of appointment or to a po-
21 sition of comparable grade and salary.

22 (C) ADDITIONAL POSITIONS.—Positions
23 authorized by subparagraph (A) shall be in ad-
24 dition to those otherwise authorized by law, in-

1 including positions authorized under section 5108
2 of title 5, United States Code.

3 (D) RATES OF PAY FOR OFFICERS AND
4 EMPLOYEES.—The Corporation may set and
5 adjust rates of basic pay for officers and em-
6 ployees appointed under subparagraph (A)
7 without regard to the provisions of chapter 51
8 or subchapter III of chapter 53 of title 5,
9 United States Code, relating to classification of
10 positions and General Schedule pay rates, re-
11 spectively.

12 (3) LIABILITY OF EMPLOYEES.—

13 (A) IN GENERAL.—An individual who is a
14 member of the Board or an officer or employee
15 of the Corporation has no liability under this
16 Act with respect to any claim arising out of or
17 resulting from any act or omission by the indi-
18 vidual within the scope of the employment of
19 the individual in connection with any trans-
20 action by the Corporation.

21 (B) RULE OF CONSTRUCTION.—Subpara-
22 graph (A) shall not be construed to limit per-
23 sonal liability of an individual for criminal acts
24 or omissions, willful or malicious misconduct,
25 acts or omissions for private gain, or any other

1 acts or omissions outside the scope of the indi-
2 vidual's employment.

3 (C) SAVINGS PROVISION.—This paragraph
4 shall not be construed—

5 (i) to affect—

6 (I) any other immunities and
7 protections that may be available to
8 an individual described in subpara-
9 graph (A) under applicable law with
10 respect to a transaction described in
11 that subparagraph; or

12 (II) any other right or remedy
13 against the Corporation, against the
14 United States under applicable law, or
15 against any person other than an indi-
16 vidual described in subparagraph (A)
17 participating in such a transaction; or

18 (ii) to limit or alter in any way the
19 immunities that are available under appli-
20 cable law for Federal officers and employ-
21 ees not described in this paragraph.

22 **SEC. 104. INSPECTOR GENERAL OF THE CORPORATION.**

23 The President shall appoint and maintain an Inspec-
24 tor General in the Corporation, in accordance with the In-
25 spector General Act of 1978 (5 U.S.C. App.).

1 **SEC. 105. INDEPENDENT ACCOUNTABILITY MECHANISM.**

2 (a) IN GENERAL.—The Board shall establish a trans-
3 parent and independent accountability mechanism.

4 (b) FUNCTIONS.—The independent accountability
5 mechanism established pursuant to subsection (a) shall—

6 (1) annually evaluate and report to the Board
7 and Congress regarding compliance with environ-
8 mental, social, labor, human rights, and trans-
9 parency standards, consistent with Corporation stat-
10 utory mandates;

11 (2) provide a forum for resolving concerns re-
12 garding the impacts of specific Corporation-sup-
13 ported projects with respect to such standards; and

14 (3) provide advice regarding Corporation
15 projects, policies, and practices.

16 **TITLE II—AUTHORITIES**

17 **SEC. 201. AUTHORITIES RELATING TO PROVISION OF SUP-**
18 **PORT.**

19 (a) IN GENERAL.—The authorities in this title should
20 only be exercised to—

21 (1) carry out of the policy of the United States
22 in section 101 and the purpose of the Corporation
23 in section 102;

24 (2) mitigate risks to United States taxpayers by
25 sharing risks with the private sector and qualifying

1 sovereign entities through co-financing and struc-
2 turing of tools; and

3 (3) ensure that support provided under this
4 title is additional to private sector resources by mo-
5 bilizing private capital that would otherwise not be
6 deployed without such support.

7 (b) LENDING AND GUARANTIES.—

8 (1) IN GENERAL.—The Corporation may make
9 loans or guaranties upon such terms and conditions
10 as the Corporation may determine.

11 (2) DENOMINATION.—Loans and guaranties
12 issued under paragraph (1) may be denominated and
13 repayable in United States dollars or foreign cur-
14 rencies. Foreign currency denominated loans and
15 guaranties should only be provided if the Board de-
16 termines there is a substantive policy rationale for
17 such loans and guaranties.

18 (3) APPLICABILITY OF FEDERAL CREDIT RE-
19 FORM ACT OF 1990.—Loans and guaranties issued
20 under paragraph (1) shall be subject to the require-
21 ments of the Federal Credit Reform Act of 1990 (2
22 U.S.C. 661 et seq.).

23 (c) EQUITY INVESTMENTS.—

24 (1) IN GENERAL.—The Corporation may, as a
25 minority investor, support projects with funds or use

1 other mechanisms for the purpose of purchasing,
2 and may make and fund commitments to purchase,
3 invest in, make pledges in respect of, or otherwise
4 acquire, equity or quasi-equity securities or shares or
5 financial interests of any entity, including as a lim-
6 ited partner or other investor in investment funds,
7 upon such terms and conditions as the Corporation
8 may determine.

9 (2) DENOMINATION.—Support provided under
10 paragraph (1) may be denominated and repayable in
11 United States dollars or foreign currency. Foreign
12 currency denominated support provided by para-
13 graph (1) should only be provided if the Board de-
14 termines there is a substantive policy rationale for
15 such support.

16 (3) GUIDELINES AND CRITERIA.—The Corpora-
17 tion shall develop guidelines and criteria to require
18 that the use of the authority provided by paragraph
19 (1) with respect to a project has a clearly defined
20 development and foreign policy purpose, taking into
21 account the following objectives:

22 (A) The support for the project would be
23 more likely than not to substantially reduce or
24 overcome the effect of an identified market fail-

1 ure in the country in which the project is car-
2 ried out.

3 (B) The project would not have proceeded
4 or would have been substantially delayed with-
5 out the support.

6 (C) The support would meaningfully con-
7 tribute to transforming local conditions to pro-
8 mote the development of markets.

9 (D) The support can be shown to be
10 aligned with commercial partner incentives.

11 (E) The support can be shown to have sig-
12 nificant developmental impact and will con-
13 tribute to long-term commercial sustainability.

14 (F) The support furthers the policy of the
15 United States described in section 101.

16 (4) LIMITATIONS ON EQUITY INVESTMENTS.—

17 (A) PER PROJECT LIMIT.—The aggregate
18 amount of support provided under this sub-
19 section with respect to any project shall not ex-
20 ceed 30 percent of the aggregate amount of all
21 equity investment made from any source to the
22 project at the time that the Corporation ap-
23 proves support of the project.

24 (B) TOTAL LIMIT.—Support provided pur-
25 suant to this subsection shall be limited to not

1 more than 35 percent of the Corporation's ag-
2 gregate exposure on the date that such support
3 is provided.

4 (5) SALES AND LIQUIDATION OF POSITION.—
5 The Corporation shall seek to sell and liquidate any
6 support for a project provided under this subsection
7 as soon as commercially feasible, commensurate with
8 other similar investors in the project and taking into
9 consideration the national security interests of the
10 United States.

11 (6) TIMETABLE.—The Corporation shall create
12 a project-specific timetable for support provided
13 under paragraph (1).

14 (d) INSURANCE AND REINSURANCE.—The Corpora-
15 tion may issue insurance or reinsurance, upon such terms
16 and conditions as the Corporation may determine, to pri-
17 vate sector entities and qualifying sovereign entities assur-
18 ing protection of their investments in whole or in part
19 against any or all political risks such as currency incon-
20 vertibility and transfer restrictions, expropriation, war,
21 terrorism, civil disturbance, breach of contract, or nonhon-
22 oring of financial obligations.

23 (e) PROMOTION OF AND SUPPORT FOR PRIVATE IN-
24 VESTMENT OPPORTUNITIES.—

1 (1) IN GENERAL.—In order to carry out the
2 purpose of the Corporation described in section
3 102(b), the Corporation may initiate and support,
4 through financial participation, incentive grant, or
5 otherwise, and on such terms and conditions as the
6 Corporation may determine, feasibility studies for
7 the planning, development, and management of, and
8 procurement for, potential bilateral and multilateral
9 development projects eligible for support under this
10 title, including training activities undertaken in con-
11 nection with such projects, for the purpose of pro-
12 moting investment in such projects and the identi-
13 fication, assessment, surveying, and promotion of
14 private investment opportunities, utilizing wherever
15 feasible and effective, the facilities of private inves-
16 tors.

17 (2) CONTRIBUTIONS TO COSTS.—The Corpora-
18 tion shall, to the maximum extent practicable, re-
19 quire any person receiving funds under the authori-
20 ties of this subsection to—

21 (A) share the costs of feasibility studies
22 and other project planning services funded
23 under this subsection; and

1 (B) reimburse the Corporation those funds
2 provided under this section, if the person suc-
3 ceeds in project implementation.

4 (f) SPECIAL PROJECTS AND PROGRAMS.—The Cor-
5 poration may administer and manage special projects and
6 programs in support of specific transactions undertaken
7 by the Corporation, including programs of financial and
8 advisory support that provide private technical, profes-
9 sional, or managerial assistance in the development of
10 human resources, skills, technology, capital savings, or in-
11 termediate financial and investment institutions or co-
12 operatives and including the initiation of incentives,
13 grants, and studies for renewable energy, women’s eco-
14 nomic empowerment, microenterprise households, or other
15 small business activities.

16 (g) ENTERPRISE FUNDS.—

17 (1) IN GENERAL.—The Corporation may, fol-
18 lowing consultation with the Secretary of State, the
19 Administrator of the United States Agency for
20 International Development, and the heads of other
21 relevant departments or agencies, establish and op-
22 erate enterprise funds in accordance with this sub-
23 section.

24 (2) PROCEDURES AND REQUIREMENTS.—The
25 provisions of section 201 of the Support for East

1 European Democracy (SEED) Act of 1989 (22
2 U.S.C. 5421) (other than the provisions of sub-
3 sections (a), (b), (c), (d)(1), (d)(3), (e), (f), and (j)
4 of that section), shall be deemed to apply with re-
5 spect to any enterprise fund established by the Cor-
6 poration under this subsection and to funds made
7 available to any such enterprise fund in the same
8 manner and to the same extent as such provisions
9 apply with respect to enterprise funds established
10 pursuant to such section 201 or to funds made avail-
11 able to enterprise funds established under that sec-
12 tion.

13 (3) PURPOSES FOR WHICH SUPPORT MAY BE
14 PROVIDED.—The Corporation, subject to the ap-
15 proval of the Board, may designate private, non-
16 profit organizations as eligible to receive support
17 under this title for the following purposes:

18 (A) To promote development of economic
19 freedom and private sectors, including small-
20 and medium-sized enterprises and joint ven-
21 tures with the United States and host country
22 participants.

23 (B) To facilitate access to credit to small-
24 and medium-sized enterprises with sound busi-

1 ness plans in countries where there is limited
2 means of accessing credit on market terms.

3 (C) To promote policies and practices con-
4 ducive to economic freedom and private sector
5 development.

6 (D) To attract foreign direct investment
7 capital to further promote private sector devel-
8 opment and economic freedom.

9 (E) To complement the work of the United
10 States Agency for International Development
11 and other donors to improve the overall busi-
12 ness-enabling environment, financing the cre-
13 ation and expansion of the private business sec-
14 tor.

15 (F) To make financially sustainable invest-
16 ments designed to generate measurable social
17 benefits and build technical capacity in addition
18 to financial returns.

19 (4) OPERATION OF FUNDS.—

20 (A) EXPENDITURES.—Funds made avail-
21 able to an enterprise fund shall be expended at
22 the minimum rate necessary to make timely
23 payments for projects and activities carried out
24 under this subsection.

1 (B) ADMINISTRATIVE EXPENSES.—Not
2 more than 3 percent per annum of the funds
3 made available to an enterprise fund may be ob-
4 ligated or expended for the administrative ex-
5 penses of the enterprise fund.

6 (5) BOARD OF DIRECTORS.—Each enterprise
7 fund established under this subsection should be
8 governed by a Board of Directors comprised of pri-
9 vate citizens of the United States or the host coun-
10 try, who—

11 (A) shall be appointed by the President
12 after consultation with the chairmen and rank-
13 ing members of the appropriate congressional
14 committees; and

15 (B) have pursued careers in international
16 business and have demonstrated expertise in
17 international and emerging market investment
18 activities.

19 (6) MAJORITY MEMBER REQUIREMENT.—The
20 majority of the members of the Board of Directors
21 shall be United States citizens who shall have rel-
22 evant experience relating to the purposes described
23 in paragraph (3).

24 (7) REPORTS.—Not later than 1 year after the
25 date of the establishment of an enterprise fund

1 under this subsection, and annually thereafter until
2 the enterprise fund terminates in accordance with
3 paragraph (10), the Board of Directors of the enter-
4 prise fund shall—

5 (A) submit to the appropriate congres-
6 sional committees a report—

7 (i) detailing the administrative ex-
8 penses of the enterprise fund during the
9 year preceding the submission of the re-
10 port;

11 (ii) describing the operations, activi-
12 ties, engagement with civil society and rel-
13 evant local private sector entities, develop-
14 ment objectives and outcomes, financial
15 condition, and accomplishments of the en-
16 terprise fund during that year;

17 (iii) describing the results of any
18 audit conducted under paragraph (8); and

19 (iv) describing how audits conducted
20 under paragraph (8) are informing the op-
21 erations and activities of the enterprise
22 fund; and

23 (B) publish, on a publicly available inter-
24 net website of the enterprise fund, each report
25 required by subparagraph (A).

1 (8) OVERSIGHT.—

2 (A) INSPECTOR GENERAL PERFORMANCE
3 AUDITS.—

4 (i) IN GENERAL.—The Inspector Gen-
5 eral of the Corporation shall conduct peri-
6 odic audits of the activities of each enter-
7 prise fund established under this sub-
8 section.

9 (ii) CONSIDERATION.—In conducting
10 an audit under clause (i), the Inspector
11 General shall assess whether the activities
12 of the enterprise fund—

13 (I) support the purposes de-
14 scribed in paragraph (3);

15 (II) result in profitable private
16 sector investing; and

17 (III) generate measurable social
18 benefits.

19 (B) RECORDKEEPING REQUIREMENTS.—
20 The Corporation shall ensure that each enter-
21 prise fund receiving support under this sub-
22 section—

23 (i) keeps separate accounts with re-
24 spect to such support; and

1 (ii) maintains such records as may be
2 reasonably necessary to facilitate effective
3 audits under this paragraph.

4 (9) RETURN OF FUNDS TO TREASURY.—Any
5 funds resulting from any liquidation, dissolution, or
6 winding up of an enterprise fund, in whole or in
7 part, shall be returned to the Treasury of the United
8 States.

9 (10) TERMINATION.—The authority of an en-
10 terprise fund to provide support under this sub-
11 section shall terminate on the earlier of—

12 (A) the date that is 7 years after the date
13 of the first expenditure of amounts from the en-
14 terprise fund; or

15 (B) the date on which the enterprise fund
16 is liquidated.

17 (h) SUPERVISION OF SUPPORT.—Support provided
18 under this title shall be subject to section 622(c) of the
19 Foreign Assistance Act of 1961 (22 U.S.C. 2382(c)).

20 **SEC. 202. TERMS AND CONDITIONS.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), support provided by the Corporation under this title
23 shall be on such terms and conditions as the Corporation
24 may prescribe.

1 (b) REQUIREMENTS.—The following requirements
2 apply to support provided by the Corporation under this
3 title:

4 (1) The Corporation shall provide support using
5 authorities under this title only if it is necessary—

6 (A) to alleviate a credit market imperfec-
7 tion; or

8 (B) to achieve specified development or
9 foreign policy objectives of the United States
10 Government by providing support in the most
11 efficient way to meet those objectives on a case-
12 by-case basis.

13 (2) The final maturity of a loan made or guar-
14 anteed by the Corporation shall not exceed the lesser
15 of—

16 (A) 25 years; or

17 (B) debt servicing capabilities of the
18 project to be financed by the loan (as deter-
19 mined by the Corporation).

20 (3) The Corporation shall, with respect to pro-
21 viding any loan guaranty to a project, require the
22 parties to the project to bear the risk of loss in an
23 amount equal to at least 20 percent of the guaran-
24 teed support by the Corporation in the project.

1 (4) The Corporation may not make or guar-
2 antee a loan unless the Corporation determines that
3 the borrower or lender is responsible and that ade-
4 quate provision is made for servicing the loan on
5 reasonable terms and protecting the financial inter-
6 est of the United States.

7 (5) The interest rate for direct loans and inter-
8 est supplements on guaranteed loans shall be set by
9 reference to a benchmark interest rate (yield) on
10 marketable Treasury securities or other widely rec-
11 ognized or appropriate benchmarks with a similar
12 maturity to the loans being made or guaranteed, as
13 determined in consultation with the Director of the
14 Office of Management and Budget and the Secretary
15 of the Treasury. The Corporation shall establish ap-
16 propriate minimum interest rates for loans, guaran-
17 ties, and other instruments as necessary.

18 (6) The minimum interest rate for new loans as
19 established by the Corporation shall be adjusted pe-
20 riodically to take account of changes in the interest
21 rate of the benchmark financial instrument.

22 (7)(A) The Corporation shall set fees or pre-
23 miums for support provided under this title at levels
24 that minimize the cost to the Government while sup-
25 porting achievement of the objectives of support.

1 (B) The Corporation shall review fees for loan
2 guaranties periodically to ensure that the fees as-
3 sessed on new loan guaranties are at a level suffi-
4 cient to cover the Corporation's most recent esti-
5 mates of its costs.

6 (8) Any loan guaranty provided by the Corpora-
7 tion shall be conclusive evidence that—

8 (A) the guaranty has been properly ob-
9 tained;

10 (B) the loan qualified for the guaranty;
11 and

12 (C) but for fraud or material misrepresen-
13 tation by the holder of the guaranty, the guar-
14 anty is presumed to be valid, legal, and enforce-
15 able.

16 (9) The Corporation shall prescribe explicit
17 standards for use in periodically assessing the credit
18 risk of new and existing direct loans or guaranteed
19 loans.

20 (10) The Corporation may not make loans or
21 loan guaranties except to the extent that budget au-
22 thority to cover the costs of the loans or guaranties
23 is provided in advance in an appropriations Act, as
24 required by section 504 of the Federal Credit Re-
25 form Act of 1990 (2 U.S.C. 661c).

1 (11) The Corporation shall rely upon specific
2 standards to assess the developmental and strategic
3 value of projects for which it provides support and
4 should only provide the minimum level of support
5 necessary in order to support such projects.

6 (12) Any loan or loan guaranty made by the
7 Corporation should be provided on a senior basis or
8 pari passu with other senior debt unless there is a
9 substantive policy rationale to provide such support
10 otherwise.

11 **SEC. 203. PAYMENT OF LOSSES.**

12 (a) PAYMENTS FOR DEFAULTS ON GUARANTEED
13 LOANS.—

14 (1) IN GENERAL.—If the Corporation deter-
15 mines that the holder of a loan guaranteed by the
16 Corporation suffers a loss as a result of a default by
17 a borrower on the loan, the Corporation shall pay to
18 the holder the percent of the loss, as specified in the
19 guaranty contract after the holder of the loan has
20 made such further collection efforts and instituted
21 such enforcement proceedings as the Corporation
22 may require.

23 (2) SUBROGATION.—Upon making a payment
24 described in paragraph (1), the Corporation shall en-

1 sure the Corporation will be subrogated to all the
2 rights of the recipient of the payment.

3 (3) RECOVERY EFFORTS.—The Corporation
4 shall pursue recovery from the borrower of the
5 amount of any payment made under paragraph (1)
6 with respect to the loan.

7 (b) LIMITATION ON PAYMENTS.—

8 (1) IN GENERAL.—Except as provided by para-
9 graph (2), compensation for insurance, reinsurance,
10 or a guaranty issued under this title shall not exceed
11 the dollar value of the tangible or intangible con-
12 tributions or commitments made in the project, plus
13 interest, earnings, or profits actually accrued on
14 such contributions or commitments, to the extent
15 provided by such insurance, reinsurance, or guar-
16 anty.

17 (2) EXCEPTION.—

18 (A) IN GENERAL.—The Corporation may
19 provide that—

20 (i) appropriate adjustments in the in-
21 sured dollar value be made to reflect the
22 replacement cost of project assets; and

23 (ii) compensation for a claim of loss
24 under insurance of an equity investment
25 under section 201(d) may be computed on

1 the basis of the net book value attributable
2 to the equity investment on the date of
3 loss.

4 (3) ADDITIONAL LIMITATION.—

5 (A) IN GENERAL.—Notwithstanding para-
6 graph (2)(A)(ii) and except as provided in sub-
7 paragraph (B), the Corporation shall limit the
8 amount of direct insurance and reinsurance
9 issued under section 201 with respect to a
10 project so as to require that the insured and its
11 affiliates bear the risk of loss for at least 10
12 percent of the amount of the Corporation's ex-
13 posure to that insured and its affiliates in the
14 project.

15 (B) EXCEPTION.—The limitation under
16 subparagraph (A) shall not apply to direct in-
17 surance or reinsurance of loans provided by
18 banks or other financial institutions to unre-
19 lated parties.

20 (c) ACTIONS BY ATTORNEY GENERAL.—The Attor-
21 ney General shall take such action as may be appropriate
22 to enforce any right accruing to the United States as a
23 result of the issuance of any loan or guaranty under this
24 title.

1 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to preclude any forbearance for the
3 benefit of a borrower that may be agreed upon by the par-
4 ties to a loan guaranteed by the Corporation if budget au-
5 thority for any resulting costs to the United States Gov-
6 ernment (as defined in section 502 of the Federal Credit
7 Reform Act of 1990 (2 U.S.C. 661a)) is available.

8 **SEC. 204. TERMINATION.**

9 (a) IN GENERAL.—The authorities provided under
10 this title terminate on the date that is 7 years after the
11 date of the enactment of this Act.

12 (b) TERMINATION OF CORPORATION.—The Corpora-
13 tion shall terminate on the date on which the portfolio of
14 the Corporation is liquidated.

15 **TITLE III—ADMINISTRATIVE**
16 **AND GENERAL PROVISIONS**

17 **SEC. 301. OPERATIONS.**

18 (a) BILATERAL AGREEMENTS.—The Corporation
19 may provide support under title II in connection with
20 projects in any country the government of which has en-
21 tered into an agreement with the United States author-
22 izing the Corporation to provide such support in that
23 country.

24 (b) CLAIMS SETTLEMENT.—

1 (1) IN GENERAL.—Claims arising as a result of
2 support provided under title II or under predecessor
3 authority may be settled, and disputes arising as a
4 result thereof may be arbitrated with the consent of
5 the parties, on such terms and conditions as the
6 Corporation may determine.

7 (2) SETTLEMENTS CONCLUSIVE.—Payment
8 made pursuant to any settlement pursuant to para-
9 graph (1), or as a result of an arbitration award,
10 shall be final and conclusive notwithstanding any
11 other provision of law.

12 (c) PRESUMPTION OF COMPLIANCE.—Each contract
13 executed by such officer or officers as may be designated
14 by the Board shall be conclusively presumed to be issued
15 in compliance with the requirements of this Act.

16 (d) ELECTRONIC PAYMENTS AND DOCUMENTS.—The
17 Corporation shall implement policies to accept electronic
18 documents and electronic payments in all of its programs.

19 **SEC. 302. CORPORATE POWERS.**

20 (a) IN GENERAL.—The Corporation—

21 (1) may adopt, alter, and use a seal, to include
22 an identifiable symbol of the United States;

23 (2) may make and perform such contracts, in-
24 cluding no-cost contracts (as defined by the Corpora-
25 tion), grants, and other agreements notwithstanding

1 division C of subtitle I of title 41, United States
2 Code, with any person or government however des-
3 ignated and wherever situated, as may be necessary
4 for carrying out the functions of the Corporation;

5 (3) may lease, purchase, or otherwise acquire,
6 improve, and use such real property wherever situ-
7 ated, as may be necessary for carrying out the func-
8 tions of the Corporation and which, if done for the
9 Corporation's own occupancy, shall be made in con-
10 sultation with the Administrator of General Services;

11 (4) may accept cash gifts or donations of serv-
12 ices or of property (real, personal, or mixed), tan-
13 gible or intangible, for the purpose of carrying out
14 the functions of the Corporation;

15 (5) may use the United States mails in the
16 same manner and on the same conditions as the Ex-
17 ecutive departments (as defined in section 101 of
18 title 5, United States Code);

19 (6) may contract with individuals for personal
20 services, who shall not be considered Federal em-
21 ployees for any provision of law administered by the
22 Director of the Office of Personnel Management;

23 (7) may hire or obtain passenger motor vehi-
24 cles;

25 (8) may sue and be sued in its corporate name;

1 (9) may acquire, hold, or dispose of, upon such
2 terms and conditions as the Corporation may deter-
3 mine, any property, real, personal, or mixed, tan-
4 gible or intangible, or any interest in such property
5 and which, if done for the Corporation's own occu-
6 pancy, shall be made in consultation with the Ad-
7 ministrator of General Services;

8 (10) may lease office space for the Corpora-
9 tion's own use, with the obligation of amounts for
10 such lease limited to the current fiscal year for
11 which payments are due until the expiration of the
12 current lease under predecessor authority, as of the
13 day before the date of the enactment of this Act;

14 (11) may indemnify directors, officers, employ-
15 ees, and agents of the Corporation for liabilities and
16 expenses incurred in connection with their activities
17 on behalf of the Corporation;

18 (12) notwithstanding any other provision of
19 law, may represent itself or contract for representa-
20 tion in any legal or arbitral proceeding;

21 (13) may exercise any priority of the Govern-
22 ment of the United States in collecting debts from
23 bankrupt, insolvent, or decedents' estates;

24 (14) may collect, notwithstanding section
25 3711(g)(1) of title 31, United States Code, or com-

1 promise any obligations assigned to or held by the
2 Corporation, including any legal or equitable rights
3 accruing to the Corporation;

4 (15) may make arrangements with foreign gov-
5 ernments (including agencies, instrumentalities, or
6 political subdivisions of such governments) or with
7 multilateral organizations or institutions for sharing
8 liabilities;

9 (16) may sell direct investments of the Corpora-
10 tion to private investors upon such terms and condi-
11 tions as the Corporation may determine; and

12 (17) shall have such other powers as may be
13 necessary and incident to carrying out the functions
14 of the Corporation.

15 (b) TREATMENT OF PROPERTY.—Notwithstanding
16 any other provision of law relating to the acquisition, han-
17 dling, or disposal of property by the United States, the
18 Corporation shall have the right in its discretion to com-
19 plete, recondition, reconstruct, renovate, repair, maintain,
20 operate, or sell any property acquired by the Corporation
21 pursuant to the provisions of this Act and which, if done
22 for the Corporation's own occupancy, shall be made in
23 consultation with the Administrator of General Services.

1 **SEC. 303. MAXIMUM CONTINGENT LIABILITY.**

2 (a) IN GENERAL.—The maximum contingent liability
3 of the Corporation outstanding at any one time shall not
4 exceed in the aggregate the amount specified in subsection
5 (b).

6 (b) AMOUNT SPECIFIED.—

7 (1) INITIAL 5-YEAR PERIOD.—The amount
8 specified in this subsection for the 5-year period be-
9 ginning on the date of the enactment of this Act, is
10 \$60,000,000,000.

11 (2) SUBSEQUENT 5-YEAR PERIODS.—Not later
12 than 5 years after the date of the enactment of this
13 Act, and not less frequently than every 5 years
14 thereafter, the amount specified in paragraph (1)
15 shall be adjusted to reflect the percentage of the in-
16 crease (if any) in the average of the Consumer Price
17 Index during the preceding 5-year period.

18 (3) CONSUMER PRICE INDEX DEFINED.—In
19 this subsection, the term “Consumer Price Index”
20 means the most recent Consumer Price Index for All
21 Urban Consumers published by the Bureau of Labor
22 Statistics of the Department of Labor.

23 **SEC. 304. CORPORATE FUNDS.**

24 (a) CORPORATE CAPITAL ACCOUNT.—There is estab-
25 lished in the Treasury of the United States a fund to be

1 known as the “Corporate Capital Account” to carry out
2 the purposes of the Corporation.

3 (b) FUNDING.—The Corporate Capital Account shall
4 consist of—

5 (1) fees charged and collected pursuant to sub-
6 section (c);

7 (2) any amounts received pursuant to sub-
8 section (e);

9 (3) investments and returns on such invest-
10 ments pursuant to subsection (g);

11 (4) unexpended balances transferred to the Cor-
12 poration pursuant to subsection (i);

13 (5) payments received in connection with settle-
14 ments of all insurance and reinsurance claims of the
15 Corporation; and

16 (6) all other collections transferred to or earned
17 by the Corporation, excluding the cost, as defined in
18 section 502 of the Federal Credit Reform Act of
19 1990 (2 U.S.C. 661a), of loans and loan guaranties.

20 (c) FEE AUTHORITY.—Fees may be charged and col-
21 lected for providing services in amounts to be determined
22 by the Corporation.

23 (d) USES.—

24 (1) IN GENERAL.—Subject to Acts making ap-
25 propriations, the Corporation is authorized to pay—

1 (A) the cost, as defined in section 502 of
2 the Federal Credit Reform Act of 1990, of
3 loans and loan guaranties;

4 (B) administrative expenses of the Cor-
5 poration;

6 (C) for the cost of providing support au-
7 thorized by subsections (c), (e), (f), and (g) of
8 section 201; and

9 (D) project-specific transaction costs.

10 (2) INCOME AND REVENUE.—In order to carry
11 out the purposes of the Corporation, all collections
12 transferred to or earned by the Corporation, exclud-
13 ing the cost, as defined in section 502 of the Federal
14 Credit Reform Act of 1990, of loans and loan guar-
15 anties, shall be deposited into the Corporate Capital
16 Account and shall be available to carry out its pur-
17 pose, including without limitation—

18 (A) payment of all insurance and reinsur-
19 ance claims of the Corporation;

20 (B) repayments to the Treasury of
21 amounts borrowed under subsection (e); and

22 (C) dividend payments to the Treasury
23 under subsection (f).

24 (e) FULL FAITH AND CREDIT.—

1 (1) IN GENERAL.—All support provided pursu-
2 ant to predecessor authorities or title II shall con-
3 tinue to constitute obligations of the United States,
4 and the full faith and credit of the United States is
5 hereby pledged for the full payment and perform-
6 ance of such obligations.

7 (2) AUTHORITY TO BORROW.—The Corporation
8 is authorized to borrow from the Treasury such
9 sums as may be necessary to fulfill such obligations
10 of the United States and any such borrowing shall
11 be at a rate determined by the Secretary of the
12 Treasury, taking into consideration the current aver-
13 age market yields on outstanding marketable obliga-
14 tions of the United States of comparable maturities,
15 for a period jointly determined by the Corporation
16 and the Secretary, and subject to such terms and
17 conditions as the Secretary may require.

18 (f) DIVIDENDS.—The Board, in consultation with the
19 Director of the Office of Management and Budget, shall
20 annually assess a dividend payment to the Treasury if the
21 Corporation's insurance portfolio is more than 100 per-
22 cent reserved.

23 (g) INVESTMENT AUTHORITY.—

24 (1) IN GENERAL.—The Corporation may re-
25 quest the Secretary of the Treasury to invest such

1 portion of the Corporate Capital Account as is not,
2 in the Corporation's judgement, required to meet the
3 current needs of the Corporate Capital Account.

4 (2) FORM OF INVESTMENTS.—Such invest-
5 ments shall be made by the Secretary of the Treas-
6 ury in public debt obligations, with maturities suit-
7 able to the needs of the Corporate Capital Account,
8 as determined by the Corporation, and bearing inter-
9 est at rates determined by the Secretary, taking into
10 consideration current market yields on outstanding
11 marketable obligations of the United States of com-
12 parable maturities.

13 (h) COLLECTIONS.—Interest earnings made pursuant
14 to subsection (g), earnings collected related to equity in-
15 vestments, and amounts, excluding fees related to insur-
16 ance or reinsurance, collected pursuant to subsection (c),
17 shall not be collected for any fiscal year except to the ex-
18 tent provided in advance in appropriations Acts.

19 (i) TRANSFER FROM PREDECESSOR AGENCIES AND
20 PROGRAMS.—By the date end of the transition period de-
21 scribed in title VI, the unexpended balances, assets, and
22 responsibilities of any agency specified in the plan re-
23 quired by section 602 shall be transferred to the Corpora-
24 tion.

1 (j) TRANSFER OF FUNDS.—In order to carry out this
2 Act, funds authorized to be appropriated to carry out the
3 Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.)
4 may be transferred to the Corporation and funds author-
5 ized to be appropriated to the Corporation may be trans-
6 ferred to the Department of State and the United States
7 Agency for International Development.

8 (k) DEFINITION.—In this section, the term “project-
9 specific transaction costs”—

10 (1) means those costs incurred by the Corpora-
11 tion for travel, legal expenses, and direct and indi-
12 rect costs incurred in claims settlements associated
13 with the provision of support under title II and shall
14 not be considered administrative expenses for the
15 purposes of this section; and

16 (2) does not include information technology (as
17 such term is defined in section 11101 of title 40,
18 United States Code).

19 **SEC. 305. COORDINATION WITH OTHER DEVELOPMENT**
20 **AGENCIES.**

21 It is the sense of Congress that the Corporation
22 should use relevant data of the Department of State, the
23 Millennium Challenge Corporation, the United States
24 Agency for International Development, and other depart-
25 ments and agencies that have development functions to

1 better inform the decisions of the Corporation with respect
2 to providing support under title II.

3 **TITLE IV—MONITORING,**
4 **EVALUATION, AND REPORTING**

5 **SEC. 401. ESTABLISHMENT OF RISK AND AUDIT COMMIT-**
6 **TEES.**

7 (a) IN GENERAL.—To assist the Board to fulfill its
8 duties and responsibilities under section 201(a), the Cor-
9 poration shall establish a risk committee and an audit
10 committee.

11 (b) DUTIES AND RESPONSIBILITIES OF RISK COM-
12 MITTEE.—Subject to the direction of the Board, the risk
13 committee established under subsection (a) shall have
14 oversight responsibility of—

15 (1) formulating risk management policies of the
16 operations of the Corporation;

17 (2) reviewing and providing guidance on oper-
18 ation of the Corporation’s global risk management
19 framework;

20 (3) developing policies for enterprise risk man-
21 agement, monitoring, and management of strategic,
22 reputational, regulatory, operational, developmental,
23 environmental, social, and financial risks;

24 (4) developing the risk profile of the Corpora-
25 tion, including a risk management and compliance

1 framework and governance structure to support such
2 framework; and

3 (5) developing policies and procedures for as-
4 ssuming, prior to providing, and for any period dur-
5 ing which the Corporation provides, support to any
6 foreign entities, whether such entities have in place
7 sufficient enhanced due diligence policies and prac-
8 tices to prevent money laundering and corruption to
9 ensure the Corporation does not provide support to
10 persons that are—

11 (A) knowingly engaging in acts of corrup-
12 tion;

13 (B) knowingly providing material or finan-
14 cial support for terrorism, drug trafficking, or
15 human trafficking; or

16 (C) responsible for ordering or otherwise
17 directing serious or gross violations of human
18 rights.

19 (c) DUTIES AND RESPONSIBILITIES OF AUDIT COM-
20 MITTEE.—Subject to the direction of the Board, the audit
21 committee established under subsection (a) shall have the
22 oversight responsibility of—

23 (1) the integrity of the Corporation’s financial
24 reporting and systems of internal controls regarding
25 finance and accounting;

1 (2) the integrity of the Corporation’s financial
2 statements;

3 (3) the performance of the Corporation’s inter-
4 nal audit function; and

5 (4) compliance with legal and regulatory re-
6 quirements related to the finances of the Corpora-
7 tion.

8 **SEC. 402. PERFORMANCE MEASURES, EVALUATION, AND**
9 **LEARNING.**

10 (a) IN GENERAL.—The Corporation shall develop a
11 performance measurement system to evaluate and monitor
12 projects supported by the Corporation under title II and
13 to guide future projects of the Corporation.

14 (b) CONSIDERATIONS.—In developing the perform-
15 ance measurement system required by subsection (a), the
16 Corporation shall—

17 (1) develop a successor for the development im-
18 pact measurement system of the Overseas Private
19 Investment Corporation (as such system was in ef-
20 fect on the day before the date of enactment of this
21 Act);

22 (2) develop a mechanism for ensuring that sup-
23 port provided by the Corporation under title II is in
24 addition to private investment;

1 (3) develop standards for, and a method for en-
2 suring, appropriate financial performance of the
3 Corporation’s portfolio; and

4 (4) develop standards for, and a method for en-
5 suring, appropriate development performance of the
6 Corporation’s portfolio, including—

7 (A) measurement of the projected and ex
8 post development impact of a project; and

9 (B) the information necessary to comply
10 with section 403.

11 (c) PUBLIC AVAILABILITY OF CERTAIN INFORMA-
12 TION.—The Corporation shall make available to the public
13 on a regular basis information about support provided by
14 the Corporation under title II and performance metrics
15 about such support on a country-by-country basis.

16 (d) COLLABORATION.—In developing the perform-
17 ance measurement system required by subsection (a), the
18 Corporation shall consult with stakeholders and other in-
19 terested parties engaged in sustainable economic growth
20 and development.

21 **SEC. 403. ANNUAL REPORT.**

22 (a) IN GENERAL.—After the end of each fiscal year,
23 the Corporation shall submit to the appropriate congres-
24 sional committees a complete and detailed report of its op-

1 erations during that fiscal year, including an assessment
2 of—

3 (1) the economic and social development im-
4 pact, including with respect to matters described in
5 subsections (d) and (e) of section 501, of projects
6 supported by the Corporation under title II;

7 (2) the extent to which the operations of the
8 Corporation complement or are compatible with the
9 development assistance programs of the United
10 States and qualifying sovereign entities;

11 (3) the Corporation's institutional linkages with
12 other relevant United States Government depart-
13 ment and agencies, including efforts to strengthen
14 such linkages; and

15 (4) the compliance of projects supported by the
16 Corporation under title II with human rights, envi-
17 ronmental, labor, and social policies, or other such
18 related policies that govern the Corporation's sup-
19 port for projects, promulgated or otherwise adminis-
20 tered by the Corporation.

21 (b) ELEMENTS.—Each annual report required by
22 subsection (a) shall include analyses of the effects of
23 projects supported by the Corporation under title II, in-
24 cluding—

25 (1) reviews and analyses of—

1 (A) the desired development outcomes for
2 projects and whether or not the Corporation is
3 meeting the associated metrics, goals, and de-
4 velopment objectives, including, to the extent
5 practicable, in the years after conclusion of
6 projects; and

7 (B) the effect of the Corporation's support
8 on access to capital and ways in which the Cor-
9 poration is addressing identifiable market gaps
10 or inefficiencies and what impact, if any, such
11 support has on access to credit for a specific
12 project, country, or sector;

13 (2) an explanation of any partnership arrange-
14 ment or cooperation with a qualifying sovereign enti-
15 ty in support of each project;

16 (3) projections of—

17 (A) development outcomes, and whether or
18 not support for projects are meeting the associ-
19 ated performance measures, both during the
20 start-up phase and over the duration of the
21 support, and to the extent practicable, measures
22 of such development outcomes should be on a
23 gender-disaggregated basis, such as changes in
24 employment, access to financial services, enter-
25 prise development and growth, and composition

1 of executive boards and senior leadership of en-
2 terprises receiving support under title II; and

3 (B) the value of private sector assets
4 brought to bear relative to the amount of sup-
5 port provided by the Corporation and the value
6 of any other public sector support; and

7 (4) an assessment of the extent to which lessons
8 learned from the monitoring and evaluation activities
9 of the Corporation, and from annual reports from
10 previous years compiled by the Corporation, have
11 been applied to projects.

12 **SEC. 404. PUBLICLY AVAILABLE PROJECT INFORMATION.**

13 The Corporation shall—

14 (1) maintain a user-friendly, publicly available,
15 machine-readable database with detailed country-
16 level information, including a description of the sup-
17 port provided by the Corporation under title II; and

18 (2) include a clear link to information about
19 each project supported by the Corporation under
20 title II on the internet website of the Department of
21 State, “ForeignAssistance.gov”, or a successor
22 website or other online publication.

23 **SEC. 405. ENGAGEMENT WITH INVESTORS.**

24 (a) IN GENERAL.—The Corporation, acting through
25 the Chief Development Officer, shall, in cooperation with

1 the Administrator of the United States Agency for Inter-
2 national Development—

3 (1) develop a strategic relationship with private
4 sector entities focused at the nexus of business op-
5 portunities and development priorities;

6 (2) engage such entities and reduce business
7 risks primarily through direct transaction support
8 and facilitating investment partnerships;

9 (3) develop and support tools, approaches, and
10 intermediaries that can mobilize private finance at
11 scale in the developing world;

12 (4) pursue projects of all sizes, especially those
13 that are small but designed for work in the most un-
14 derdeveloped areas, including countries with chronic
15 suffering as a result of extreme poverty, fragile insti-
16 tutions, or a history of violence; and

17 (5) pursue projects consistent with the policy of
18 the United States described in section 101 and the
19 Joint Strategic Plan and the Mission Country Devel-
20 opment Cooperation Strategies of the United States
21 Agency for International Development.

22 (b) ASSISTANCE.—To achieve the goals described in
23 subsection (a), the Corporation shall—

24 (1) develop risk mitigation tools;

1 (2) provide transaction structuring support for
2 blended finance models;

3 (3) support intermediaries linking capital sup-
4 ply and demand;

5 (4) coordinate with other Federal agencies to
6 support or accelerate transactions;

7 (5) convene financial, donor, civil society, and
8 public sector partners around opportunities for pri-
9 vate finance within development priorities;

10 (6) offer strategic planning and programming
11 assistance to catalyze investment into priority sec-
12 tors;

13 (7) provide transaction structuring support;

14 (8) deliver training and knowledge management
15 tools for engaging private investors;

16 (9) partner with private sector entities that pro-
17 vide access to capital and expertise; and

18 (10) identify and screen new investment part-
19 ners.

20 (c) TECHNICAL ASSISTANCE.—The Corporation shall
21 coordinate with the United States Agency for Inter-
22 national Development and other agencies and depart-
23 ments, as necessary, on projects and programs supported
24 by the Corporation that include technical assistance.

1 **SEC. 406. NOTIFICATION OF SUPPORT TO BE PROVIDED BY**
2 **THE CORPORATION.**

3 (a) IN GENERAL.—Not later than 15 days prior to
4 the Corporation making a financial commitment associ-
5 ated with the provision of support under title II in an
6 amount in excess of \$10,000,000, the Chief Executive Of-
7 ficer of the Corporation shall submit to the Committee on
8 Foreign Affairs and the Committee on Appropriations of
9 the House of Representatives and the Committee on For-
10 eign Relations and the Committee on Appropriations of
11 the Senate a report in writing that contains the informa-
12 tion required by subsection (b).

13 (b) INFORMATION REQUIRED.—The information re-
14 quired by this subsection includes—

15 (1) the amount of each such financial commit-
16 ment;

17 (2) an identification of the recipient or bene-
18 ficiary; and

19 (3) a description of the project, activity, or
20 asset and the development goal or purpose to be
21 achieved by providing support by the Corporation.

22 **TITLE V—CONDITIONS, RESTRIC-**
23 **TIONS, AND PROHIBITIONS**

24 **SEC. 501. LIMITATIONS AND PREFERENCES.**

25 (a) LIMITATION ON SUPPORT FOR SINGLE ENTI-
26 TY.—No entity receiving support from the Corporation

1 under title II may receive more than an amount equal to
2 5 percent of the Corporation's maximum contingent liabil-
3 ity authorized under section 303.

4 (b) PREFERENCE FOR SUPPORT FOR PROJECTS
5 SPONSORED BY UNITED STATES PERSONS.—

6 (1) IN GENERAL.—The Corporation should give
7 preferential consideration to projects sponsored by
8 or involving private sector entities that are United
9 States persons.

10 (2) UNITED STATES PERSON DEFINED.—In this
11 subsection, the term “United States person”
12 means—

13 (A) a United States citizen; or

14 (B) an entity significantly beneficially
15 owned by individuals described in subparagraph

16 (A).

17 (c) PREFERENCE FOR SUPPORT IN COUNTRIES IN
18 COMPLIANCE WITH INTERNATIONAL TRADE OBLIGA-
19 TIONS.—

20 (1) CONSULTATIONS WITH UNITED STATES
21 TRADE REPRESENTATIVE.—Not less frequently than
22 annually, the Corporation shall consult with the
23 United States Trade Representative with respect to
24 the status of countries eligible to receive support
25 from the Corporation under title II and the compli-

1 ance of those countries with their international trade
2 obligations.

3 (2) PREFERENTIAL CONSIDERATION.—The Cor-
4 poration shall give preferential consideration to pro-
5 viding support under title II for projects in countries
6 in compliance with or making substantial progress
7 coming into compliance with their international
8 trade obligations.

9 (d) WORKER RIGHTS.—

10 (1) IN GENERAL.—The Corporation should sup-
11 port projects under title II in countries that are tak-
12 ing steps to adopt and implement laws that extend
13 internationally recognized worker rights (as defined
14 in section 507 of the Trade Act of 1974 (19 U.S.C.
15 2467)) to workers in that country, including any
16 designated zone in that country.

17 (2) REQUIRED CONTRACT LANGUAGE.—The
18 Corporation shall also include the following lan-
19 guage, in substantially the following form, in all con-
20 tracts which the Corporation enters into with eligible
21 investors to provide support under title II: “The per-
22 son receiving support agrees not to take actions to
23 prevent employees of the foreign enterprise from
24 lawfully exercising their right of association and
25 their right to organize and bargain collectively. The

1 person further agrees to observe applicable laws re-
2 lating to a minimum age for employment of children,
3 acceptable conditions of work with respect to min-
4 imum wages, hours of work, and occupational health
5 and safety, and not to use forced labor or the worst
6 forms of child labor (as defined in section 507 of the
7 Trade Act of 1974 (19 U.S.C. 2467(6))). The per-
8 son is not responsible under this paragraph for the
9 actions of a foreign government.”.

10 (e) ENVIRONMENTAL AND SOCIAL IMPACT.—The
11 Board shall not vote in favor of any project proposed to
12 be supported by the Corporation under title II that is like-
13 ly to have significant adverse environmental or social im-
14 pacts that are sensitive, diverse, or unprecedented, un-
15 less—

16 (1) at least 60 days before the date of the vote,
17 an environmental and social impact assessment or
18 initial environmental and social audit, analyzing the
19 environmental and social impacts of the proposed
20 project and of alternatives to the proposed project,
21 is completed; and

22 (2) such assessment or audit has been made
23 available to the public of the United States, locally
24 affected groups in the country in which the project

1 will be carried out, and nongovernmental organiza-
2 tions in that country.

3 (f) WOMEN'S ECONOMIC EMPOWERMENT.—In uti-
4 lizing its authorities under title II, the Corporation should
5 consider the impacts of its support on women's economic
6 opportunities and outcomes and make efforts to mitigate
7 gender gaps and maximize development impact by working
8 to improve women's economic opportunities.

9 (g) PREFERENCE FOR PROVISION OF SUPPORT IN
10 COUNTRIES EMBRACING PRIVATE ENTERPRISE.—

11 (1) IN GENERAL.—The Corporation should give
12 preferential consideration to projects for which sup-
13 port under title II may potentially be provided in
14 countries the governments of which have dem-
15 onstrated consistent support for economic policies
16 that promote the development of private enterprise,
17 both domestic and foreign, and maintaining the con-
18 ditions that enable private enterprise to make its full
19 contribution to the development of such countries,
20 including—

21 (A) market-based economic policies;

22 (B) protecting private property rights;

23 (C) respect for the rule of law; and

24 (D) systems to combat corruption and
25 bribery.

1 (2) SOURCES OF INFORMATION.—The Corpora-
2 tion should rely on both third-party indicators and
3 United States Government information, such as the
4 Department of State’s Investment Climate State-
5 ments, the Department of Commerce’s Country
6 Commercial Guides, or the Millennium Challenge
7 Corporation’s Constraints Analysis, to assess wheth-
8 er countries meet the conditions described in para-
9 graph (1).

10 (h) CONSIDERATION OF FOREIGN BOYCOTT PARTICI-
11 PATION.—In providing support for projects under title II,
12 the Corporation shall consider, using information readily
13 available, whether the project is sponsored by or substan-
14 tially affiliated with any person taking or knowingly agree-
15 ing to take actions, or having taken or knowingly agreed
16 to take actions within the past 3 years, which demonstrate
17 or otherwise evidence intent to comply with, further, or
18 support any boycott fostered or imposed by any foreign
19 country, or request to impose any boycott by any foreign
20 country, against a country which is friendly to the United
21 States and which is not itself the object of any form of
22 boycott pursuant to United States law or regulation.

1 **SEC. 502. ADDITIONALITY AND AVOIDANCE OF MARKET**
2 **DISTORTION.**

3 (a) IN GENERAL.—Before the Corporation provides
4 support for a project under title II, the Corporation shall
5 ensure that private sector entities are afforded an oppor-
6 tunity to support the project.

7 (b) SAFEGUARDS, POLICIES, AND GUIDELINES.—The
8 Corporation shall develop appropriate safeguards, policies,
9 and guidelines to ensure that support provided by the Cor-
10 poration under title II—

11 (1) supplements and encourages, but does not
12 compete with, private sector support;

13 (2) operates according to internationally recog-
14 nized best practices and standards with respect to
15 ensuring the avoidance of market distorting govern-
16 ment subsidies and the crowding out of private sec-
17 tor lending; and

18 (3) does not have a significant adverse impact
19 on United States employment.

20 **SEC. 503. PROHIBITION ON SUPPORT IN SANCTIONED**
21 **COUNTRIES AND WITH SANCTIONED PER-**
22 **SONS.**

23 (a) IN GENERAL.—The Corporation is prohibited
24 from providing support under title II in a country the gov-
25 ernment of which the Secretary of State has determined

1 has repeatedly provided support for acts of international
2 terrorism for purposes of—

3 (1) section 6(j)(1)(A) of the Export Administra-
4 tion Act of 1979 (50 U.S.C. 4605(j)(1)(A)) (as con-
5 tinued in effect pursuant to the International Emer-
6 gency Economic Powers Act (50 U.S.C. 1701 et
7 seq.));

8 (2) section 620A(a) of the Foreign Assistance
9 Act of 1961 (22 U.S.C. 2371(a));

10 (3) section 40(d) of the Arms Export Control
11 Act (22 U.S.C. 2780(d)); or

12 (4) any other provision of law.

13 (b) PROHIBITION ON SUPPORT OF SANCTIONED PER-
14 SONS.—The Corporation is prohibited from supporting a
15 project under title II that directly benefits any entity sub-
16 ject to sanctions imposed by the United States.

17 (c) PROHIBITION ON SUPPORT OF ACTIVITIES SUB-
18 JECT TO SANCTIONS.—The Corporation shall require any
19 entity or party receiving support under title II to certify
20 it, any entity owned or controlled by the entity or party,
21 or any entity or party which owns or otherwise manages
22 the entity or party receiving support, does not conduct any
23 activities subject to sanctions imposed by the United
24 States.

1 **SEC. 504. PENALTIES FOR MISREPRESENTATION, FRAUD,**
2 **AND BRIBERY.**

3 Subsections (g), (l), and (n) of section 237 of the
4 Foreign Assistance Act of 1961 (22 U.S.C. 2197) shall
5 apply with respect to the Corporation to the same extent
6 and in the same manner as such subsections applied with
7 respect to the Overseas Private Investment Corporation
8 on the day before the date of the enactment of this Act.

9 **TITLE VI—TRANSITIONAL**
10 **PROVISIONS**

11 **SEC. 601. DEFINITIONS.**

12 In this title:

13 (1) AGENCY.—The term “agency” includes any
14 entity, organizational unit, program, or function.

15 (2) TRANSITION PERIOD.—The term “transi-
16 tion period” means the period—

17 (A) beginning on the date of the enactment
18 of this Act; and

19 (B) ending on the effective date of the re-
20 organization plan required by section 602(e).

21 **SEC. 602. REORGANIZATION PLAN.**

22 (a) SUBMISSION OF PLAN.—

23 (1) IN GENERAL.—Not later than 120 days
24 after the date of the enactment of this Act, the
25 President shall transmit to the appropriate congres-

1 sional committees a reorganization plan regarding
2 the following:

3 (A) The transfer of agencies, personnel,
4 assets, and obligations to the Corporation pur-
5 suant to this title.

6 (B) Any consolidation, reorganization, or
7 streamlining of agencies transferred to the Cor-
8 poration pursuant to this title.

9 (C) Any efficiencies or cost savings
10 achieved as a result of the transfer of agencies,
11 personnel, assets, and obligations to the Cor-
12 poration pursuant to this title, including reduc-
13 tions in unnecessary or duplicative operations,
14 assets, and personnel.

15 (2) CONSULTATION.—Not later than 15 days
16 before the date on which the plan is transmitted
17 pursuant to this subsection, the President shall con-
18 sult with the appropriate congressional committees
19 on such plan.

20 (b) PLAN ELEMENTS.—The plan transmitted under
21 subsection (a) shall contain, consistent with this Act, such
22 elements as the President deems appropriate, including
23 the following:

24 (1) Identification of any functions of agencies
25 transferred to the Corporation pursuant to this title

1 that will not be transferred to the Corporation under
2 the plan.

3 (2) Specification of the steps to be taken to or-
4 ganize the Corporation, including the delegation or
5 assignment of functions transferred to the Corpora-
6 tion.

7 (3) Specification of the funds available to each
8 agency that will be transferred to the Corporation as
9 a result of transfers under the plan.

10 (4) Specification of the proposed allocations
11 within the Corporation of unexpended funds trans-
12 ferred in connection with transfers under the plan.

13 (5) Specification of any proposed disposition of
14 property, facilities, contracts, records, and other as-
15 sets and obligations of agencies transferred under
16 the plan.

17 (c) REPORT ON COORDINATION.—

18 (1) IN GENERAL.—The transfer of functions
19 authorized by this section may occur only after the
20 President and Chief Executive Officer of the Over-
21 seas Private Investment Corporation and the Admin-
22 istrator of the United States Agency for Inter-
23 national Development jointly submit to the Com-
24 mittee on Foreign Affairs and Committee on Appro-
25 priations of the House of Representatives and Com-

1 mittee on Foreign Relations and Committee on Ap-
2 propriations of the Senate a report in writing that
3 contains the information required by paragraph (2).

4 (2) INFORMATION REQUIRED.—The information
5 required by this paragraph includes a description in
6 detail of the procedures to be followed after the
7 transfer of functions authorized by this section have
8 occurred to coordinate between the Corporation and
9 the United States Agency for International Develop-
10 ment in carrying out the functions so transferred.

11 (d) MODIFICATION OF PLAN.—The President shall
12 consult with the appropriate congressional committees be-
13 fore making any material modification or revision to the
14 plan before the plan becomes effective in accordance with
15 subsection (e).

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The reorganization plan de-
18 scribed in this section, including any modifications
19 or revisions of the plan under subsection (c), shall
20 become effective for an agency on the date specified
21 in the plan (or the plan as modified pursuant to sub-
22 section (d)), except that such date may not be ear-
23 lier than 90 days after the date the President has
24 transmitted the reorganization plan to the appro-

1 appropriate congressional committees pursuant to sub-
2 section (a).

3 (2) STATUTORY CONSTRUCTION.—Nothing in
4 this subsection may be construed to require the
5 transfer of functions, personnel, records, balances of
6 appropriations, or other assets of an agency on a
7 single date.

8 **SEC. 603. TRANSFER OF FUNCTIONS.**

9 (a) IN GENERAL.—Effective at the end of the transi-
10 tion period, there shall be transferred to the Corporation
11 the functions, personnel, assets, and liabilities of—

12 (1) the Overseas Private Investment Corpora-
13 tion, as in existence on the day before the date of
14 the enactment of this Act; and

15 (2) the following elements of the United States
16 Agency for International Development:

17 (A) The Development Credit Authority.

18 (B) The existing Legacy Credit portfolio
19 under the Urban Environment Program and
20 any other direct loan programs and non-Devel-
21 opment Credit Authority guaranty programs
22 authorized by the Foreign Assistance Act of
23 1961 (22 U.S.C. 2151 et seq.) or other prede-
24 cessor Acts, as in existence on the date of the

1 enactment of this Act, other than any sovereign
2 loan guaranties.

3 (b) **ADDITIONAL TRANSFER AUTHORITY.**—Effective
4 at the end of the transition period, there is authorized to
5 be transferred to the Corporation the functions, personnel,
6 assets, and liabilities of the following elements of the
7 United States Agency for International Development:

8 (1) The Office of Private Capital and Microen-
9 terprise.

10 (2) The enterprise funds.

11 (c) **SOVEREIGN LOAN GUARANTY TRANSFER.**—

12 (1) **IN GENERAL.**—Effective at the end of the
13 transition period, there is authorized to be trans-
14 ferred to the Corporation or any other appropriate
15 department or agency of the United States Govern-
16 ment the loan accounts and the legal rights and re-
17 sponsibilities for the sovereign loan guaranty port-
18 folio held by the United States Agency for Inter-
19 national Development as in existence on the day be-
20 fore the date of the enactment of this Act.

21 (2) **INCLUSION IN REORGANIZATION PLAN.**—
22 The President shall include in the reorganization
23 plan submitted under section 602 a description of
24 the transfer authorized under paragraph (1).

1 (d) BILATERAL AGREEMENTS.—Any bilateral agree-
2 ment of the United States in effect on the date of the
3 enactment of this Act that serves as the basis for pro-
4 grams of the Overseas Private Investment Corporation
5 and the Development Credit Authority shall be considered
6 as satisfying the requirements of section 301(a).

7 (e) TRANSITION.—During the transition period, the
8 agencies specified in subsection (a) shall—

9 (1) continue to administer the assets and obli-
10 gations of those agencies; and

11 (2) carry out such programs and activities au-
12 thorized under this Act as may be determined by the
13 President.

14 **SEC. 604. TERMINATION OF OVERSEAS PRIVATE INVEST-**
15 **MENT CORPORATION AND OTHER**
16 **SUPERCEDED AUTHORITIES.**

17 Effective at the end of the transition period—

18 (1) the Overseas Private Investment Corpora-
19 tion is terminated; and

20 (2) title IV of chapter 2 of part I of the For-
21 eign Assistance Act of 1961 (22 U.S.C. 2191 et
22 seq.) (other than subsections (g), (l), and (n) of sec-
23 tion 237 of that Act) is repealed.

1 **SEC. 605. TRANSITIONAL AUTHORITIES.**

2 (a) **PROVISION OF ASSISTANCE BY OFFICIALS.—**

3 Until the transfer of an agency to the Corporation under
4 section 603, any official having authority over or functions
5 relating to the agency on the day before the date of the
6 enactment of this Act shall provide to the Corporation
7 such assistance, including the use of personnel and assets,
8 as the Corporation may request in preparing for the trans-
9 fer and integration of the agency into the Corporation.

10 (b) **SERVICES AND PERSONNEL.—**During the transi-
11 tion period, upon the request of the Corporation, the head
12 of any executive agency may, on a reimbursable or non-
13 reimbursable basis, provide services or detail personnel to
14 assist with the transition.

15 (c) **ACTING OFFICIALS.—**

16 (1) **IN GENERAL.—**During the transition pe-
17 riod, pending the advice and consent of the Senate
18 to the appointment of an officer required by this Act
19 to be appointed by and with such advice and con-
20 sent, the President may designate any officer whose
21 appointment was required to be made by and with
22 such advice and consent and who was such an officer
23 before the date of the enactment of this Act (and
24 who continues in office) or immediately before such
25 designation, to act in such office until the same is

1 filled as provided in this Act. While so acting, such
2 officers shall receive compensation at the higher of—

3 (A) the rates provided by this Act for the
4 respective offices in which they act; or

5 (B) the rates provided for the offices held
6 at the time of designation.

7 (2) RULE OF CONSTRUCTION.—Nothing in this
8 Act shall be construed to require the advice and con-
9 sent of the Senate to the appointment by the Presi-
10 dent to a position in the Corporation of any officer
11 whose agency is transferred to the Corporation pur-
12 suant to this title and whose duties following such
13 transfer are germane to those performed before such
14 transfer.

15 (d) TRANSFER OF PERSONNEL, ASSETS, OBLIGA-
16 TIONS, AND FUNCTIONS.—Upon the transfer of an agency
17 to the Corporation under section 603—

18 (1) the personnel, assets, and obligations held
19 by or available in connection with the agency shall
20 be transferred to the Corporation for appropriate al-
21 location, subject to the approval of the Director of
22 the Office of Management and Budget and in ac-
23 cordance with section 1531(a)(2) of title 31, United
24 States Code; and

25 (2) the Corporation shall have all functions—

1 (A) relating to the agency that any other
2 official could by law exercise in relation to the
3 agency immediately before such transfer; and

4 (B) vested in the Corporation by this Act
5 or other law.

6 **SEC. 606. SAVINGS PROVISIONS.**

7 (a) COMPLETED ADMINISTRATIVE ACTIONS.—

8 (1) IN GENERAL.—Completed administrative
9 actions of an agency shall not be affected by the en-
10 actment of this Act or the transfer of such agency
11 to the Corporation under section 603, but shall con-
12 tinue in effect according to their terms until amend-
13 ed, modified, superseded, terminated, set aside, or
14 revoked in accordance with law by an officer of the
15 United States or a court of competent jurisdiction,
16 or by operation of law.

17 (2) COMPLETED ADMINISTRATIVE ACTION DE-
18 FINED.—In this subsection, the term “completed ad-
19 ministrative action” includes orders, determinations,
20 rules, regulations, personnel actions, permits, agree-
21 ments, grants, contracts, certificates, policies, li-
22 censes, registrations, and privileges.

23 (b) PENDING PROCEEDINGS.—

24 (1) IN GENERAL.—Pending proceedings in an
25 agency, including notices of proposed rulemaking,

1 and applications for licenses, permits, certificates,
2 grants, and financial assistance, shall continue not-
3 withstanding the enactment of this Act or the trans-
4 fer of the agency to the Corporation, unless discon-
5 tinued or modified under the same terms and condi-
6 tions and to the same extent that such discontinu-
7 ance could have occurred if such enactment or trans-
8 fer had not occurred.

9 (2) ORDERS.—Orders issued in proceedings de-
10 scribed in paragraph (1), and appeals therefrom,
11 and payments made pursuant to such orders, shall
12 issue in the same manner and on the same terms as
13 if this Act had not been enacted or the agency had
14 not been transferred, and any such orders shall con-
15 tinue in effect until amended, modified, superseded,
16 terminated, set aside, or revoked by an officer of the
17 United States or a court of competent jurisdiction,
18 or by operation of law.

19 (c) PENDING CIVIL ACTIONS.—Pending civil actions
20 shall continue notwithstanding the enactment of this Act
21 or the transfer of an agency to the Corporation, and in
22 such civil actions, proceedings shall be had, appeals taken,
23 and judgments rendered and enforced in the same manner
24 and with the same effect as if such enactment or transfer
25 had not occurred.

1 (d) REFERENCES.—References relating to an agency
2 that is transferred to the Corporation under section 603
3 in statutes, Executive orders, rules, regulations, directives,
4 or delegations of authority that precede such transfer or
5 the date of the enactment of this Act shall be deemed to
6 refer, as appropriate, to the Corporation, to its officers,
7 employees, or agents, or to its corresponding organiza-
8 tional units or functions. Statutory reporting requirements
9 that applied in relation to such an agency immediately be-
10 fore the effective date of this Act shall continue to apply
11 following such transfer if they refer to the agency by
12 name.

13 (e) EMPLOYMENT PROVISIONS.—

14 (1) REGULATIONS.—The Corporation may, in
15 regulations prescribed jointly with the Director of
16 the Office of Personnel Management, adopt the
17 rules, procedures, terms, and conditions, established
18 by statute, rule, or regulation before the date of the
19 enactment of this Act, relating to employment in any
20 agency transferred to the Corporation under section
21 603.

22 (2) EFFECT OF TRANSFER ON CONDITIONS OF
23 EMPLOYMENT.—Except as otherwise provided in this
24 Act, or under authority granted by this Act, the
25 transfer pursuant to this title of personnel shall not

1 alter the terms and conditions of employment, in-
2 cluding compensation, of any employee so trans-
3 ferred.

4 (f) STATUTORY REPORTING REQUIREMENTS.—Any
5 statutory reporting requirement that applied to an agency
6 transferred to the Corporation under this title immediately
7 before the date of the enactment of this Act shall continue
8 to apply following that transfer if the statutory require-
9 ment refers to the agency by name.

10 **SEC. 607. OTHER TERMINATIONS.**

11 Except as otherwise provided in this Act, whenever
12 all the functions vested by law in any agency have been
13 transferred pursuant to this title, each position and office
14 the incumbent of which was authorized to receive com-
15 pensation at the rates prescribed for an office or position
16 at level II, III, IV, or V of the Executive Schedule under
17 subchapter II of chapter 53 of title 5, United States Code,
18 shall terminate.

19 **SEC. 608. INCIDENTAL TRANSFERS.**

20 The Director of the Office of Management and Budg-
21 et, in consultation with the Corporation, is authorized and
22 directed to make such additional incidental dispositions of
23 personnel, assets, and liabilities held, used, arising from,
24 available, or to be made available, in connection with the

1 functions transferred by this title, as the Director may de-
2 termine necessary to accomplish the purposes of this Act.

3 **SEC. 609. REFERENCE.**

4 With respect to any function transferred under this
5 title (including under a reorganization plan under section
6 602) and exercised on or after the date of the enactment
7 of this Act, reference in any other Federal law to any de-
8 partment, commission, or agency or any officer or office
9 the functions of which are so transferred shall be deemed
10 to refer to the Corporation or official or component of the
11 Corporation to which that function is so transferred.

12 **SEC. 610. CONFORMING AMENDMENTS.**

13 (a) EXEMPT PROGRAMS.—Section 255(g) of the Bal-
14 anced Budget and Emergency Deficit Control Act of 1985
15 (2 U.S.C. 905(g)) is amended by striking “Overseas Pri-
16 vate Investment Corporation, Noncredit Account (71–
17 4184–0–3–151).” and inserting “United States Inter-
18 national Development Finance Corporation.”.

19 (b) EXECUTIVE SCHEDULE.—Title 5, United States
20 Code, is amended—

21 (1) in section 5314, by striking “President,
22 Overseas Private Investment Corporation.”;

23 (2) in section 5315, by striking “Executive Vice
24 President, Overseas Private Investment Corpora-
25 tion.”; and

1 (3) in section 5316, by striking “Vice Presi-
2 dents, Overseas Private Investment Corporation
3 (3).”.

4 (c) OFFICE OF INTERNATIONAL TRADE OF THE
5 SMALL BUSINESS ADMINISTRATION.—Section 22 of the
6 Small Business Act (15 U.S.C. 649) is amended—

7 (1) in subsection (b), in the matter preceding
8 paragraph (1), by striking “the President of the
9 Overseas Private Investment Corporation, Director”
10 and inserting “the Board of Directors of the United
11 States International Development Finance Corpora-
12 tion, the Director”; and

13 (2) by striking “Overseas Private Investment
14 Corporation” each place it appears and inserting
15 “United States International Development Finance
16 Corporation”.

17 (d) UNITED STATES AND FOREIGN COMMERCIAL
18 SERVICE.—Section 2301 of the Export Enhancement Act
19 of 1988 (15 U.S.C. 4721) is amended by striking “Over-
20 seas Private Investment Corporation” each place it ap-
21 pears and inserting “United States International Develop-
22 ment Finance Corporation”.

23 (e) TRADE PROMOTION COORDINATING COM-
24 MITTEE.—Section 2312(d)(1)(K) of the Export Enhance-
25 ment Act of 1988 (15 U.S.C. 4727(d)(1)(K)) is amended

1 by striking “Overseas Private Investment Corporation”
2 and inserting “United States International Development
3 Finance Corporation”.

4 (f) INTERAGENCY TRADE DATA ADVISORY COM-
5 MITTEE.—Section 5402(b) of the Omnibus Trade and
6 Competitiveness Act of 1988 (15 U.S.C. 4902(b)) is
7 amended by striking “the President of the Overseas Pri-
8 vate Investment Corporation” and inserting “the Chief
9 Executive Officer of the United States International De-
10 velopment Finance Corporation”.

11 (g) MISUSE OF NAMES OF FEDERAL AGENCIES.—
12 Section 709 of title 18, United States Code, is amended
13 by striking “‘Overseas Private Investment’, ‘Overseas Pri-
14 vate Investment Corporation’, or ‘OPIC’,” and inserting
15 “‘United States International Development Finance Cor-
16 poration’ or ‘DFC’”.

17 (h) ENGAGEMENT ON CURRENCY EXCHANGE RATE
18 AND ECONOMIC POLICIES.—Section 701(c)(1)(A) of the
19 Trade Facilitation and Trade Enforcement Act of 2015
20 (19 U.S.C. 4421(c)(1)(A)) is amended by striking “Over-
21 seas Private Investment Corporation” and inserting
22 “United States International Development Finance Cor-
23 poration”.

24 (i) INTERNSHIPS WITH INSTITUTE FOR INTER-
25 NATIONAL PUBLIC POLICY.—Section 625 of the Higher

1 Education Act of 1965 (20 U.S.C. 1131c(a)) is amended
2 by striking “Overseas Private Investment Corporation”
3 and inserting “United States International Development
4 Finance Corporation”.

5 (j) FOREIGN ASSISTANCE ACT OF 1961.—The For-
6 eign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is
7 amended—

8 (1) in section 449B(b)(2) (22 U.S.C.
9 2296b(b)(2)), by striking “Overseas Private Invest-
10 ment Corporation” and inserting “United States
11 International Development Finance Corporation”;
12 and

13 (2) in section 481(e)(4)(A) (22 U.S.C.
14 2291(e)(4)(A)), in the matter preceding clause (i),
15 by striking “(including programs under title IV of
16 chapter 2, relating to the Overseas Private Invest-
17 ment Corporation)” and inserting “(and any support
18 under title II of the Better Utilization of Invest-
19 ments Leading to Development Act of 2018, relating
20 to the United States International Development Fi-
21 nance Corporation)”.

22 (k) ELECTRIFY AFRICA ACT OF 2015.—Sections 5
23 and 7 of the Electrify Africa Act of 2015 (Public Law
24 114–121; 22 U.S.C. 2293 note) are amended by striking
25 “Overseas Private Investment Corporation” each place it

1 appears and inserting “United States International Devel-
2 opment Finance Corporation”.

3 (l) FOREIGN AID TRANSPARENCY AND ACCOUNT-
4 ABILITY ACT OF 2016.—Section 2(3) of the Foreign Aid
5 Transparency and Accountability Act of 2016 (Public Law
6 114–191; 22 U.S.C. 2394e note) is amended—

7 (1) in subparagraph (A), by striking “except
8 for” and all that follows through “chapter 3” and
9 insert “except for chapter 3”;

10 (2) in subparagraph (C), by striking “and” at
11 the end;

12 (3) in subparagraph (D), by striking the period
13 at the end and inserting “; and”; and

14 (4) by adding at the end the following:

15 “(E) the Better Utilization of Investments
16 Leading to Development Act of 2018.”.

17 (m) SUPPORT FOR EAST EUROPEAN DEMOCRACY
18 (SEED) PROGRAM.—The Support for East European De-
19 mocracy (SEED) Act of 1989 (22 U.S.C. 5401 et seq.)
20 is amended—

21 (1) in section 2(c) (22 U.S.C. 5401(c)), by
22 striking paragraph (12) and inserting the following:

23 “(12) UNITED STATES INTERNATIONAL DEVEL-
24 OPMENT FINANCE CORPORATION.—Programs of the

1 United States International Development Finance
2 Corporation.”; and

3 (2) in section 201(e) (22 U.S.C. 5421(e)), by
4 striking “Agency for International Development”
5 and inserting “United States International Develop-
6 ment Finance Corporation”.

7 (n) CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY
8 (LIBERTAD) ACT OF 1996.—Section 202(b)(2)(B)(iv)
9 of the Cuban Liberty and Democratic Solidarity
10 (LIBERTAD) Act of 1996 (22 U.S.C. 6062(b)(2)(B)(iv))
11 is amended by striking “Overseas Private Investment Cor-
12 poration” and inserting “United States International De-
13 velopment Finance Corporation”.

14 (o) INTERNATIONAL RELIGIOUS FREEDOM ACT OF
15 1998.—Section 405(a)(10) of the International Religious
16 Freedom Act of 1998 (22 U.S.C. 6445(a)(10)) is amended
17 by striking “Overseas Private Investment Corporation”
18 and inserting “United States International Development
19 Finance Corporation”.

20 (p) TRAFFICKING VICTIMS PROTECTION ACT OF
21 2000.—Section 103(8)(A) of the Trafficking Victims Pro-
22 tection Act of 2000 (22 U.S.C. 7102(8)(A)) is amended
23 in clause (viii) to read as follows:

24 “(viii) any support under title II of
25 the Better Utilization of Investments

1 Leading to Development Act of 2018 relat-
2 ing to the United States International De-
3 velopment Finance Corporation; and”.

4 (q) TECHNOLOGY DEPLOYMENT IN DEVELOPING
5 COUNTRIES.—Section 732(b) of the Global Environmental
6 Protection Assistance Act of 1989 (22 U.S.C. 7902(b))
7 is amended by striking “Overseas Private Investment Cor-
8 poration” and inserting “United States International De-
9 velopment Finance Corporation”.

10 (r) EXPANDED NONMILITARY ASSISTANCE FOR
11 UKRAINE.—Section 7(c)(3) of the Ukraine Freedom Sup-
12 port Act of 2014 (22 U.S.C. 8926(c)(3)) is amended—

13 (1) in the paragraph heading, by striking
14 “OVERSEAS PRIVATE INVESTMENT CORPORATION”
15 and inserting “UNITED STATES INTERNATIONAL DE-
16 VELOPMENT FINANCE CORPORATION”;

17 (2) in the matter preceding subparagraph (A),
18 by striking “Overseas Private Investment Corpora-
19 tion” and inserting “United States International De-
20 velopment Finance Corporation”; and

21 (3) in subparagraph (B), by striking “by eligi-
22 ble investors (as defined in section 238 of the For-
23 eign Assistance Act of 1961 (22 U.S.C. 2198))”.

24 (s) GLOBAL FOOD SECURITY ACT OF 2016.—Section
25 4(7) of the Global Food Security Act of 2016 (22 U.S.C.

1 9303(7)) is amended by striking “Overseas Private Invest-
2 ment Corporation” and inserting “United States Inter-
3 national Development Finance Corporation”.

4 (t) SENSE OF CONGRESS ON EUROPEAN AND EUR-
5 ASIAN ENERGY SECURITY.—Section 257(c)(2)(B) of the
6 Countering Russian Influence in Europe and Eurasia Act
7 of 2017 (22 U.S.C. 9546(c)(2)(B)) is amended by striking
8 “Overseas Private Investment Corporation” and inserting
9 “United States International Development Finance Cor-
10 poration”.

11 (u) WHOLLY OWNED GOVERNMENT CORPORA-
12 TION.—Section 9101(3) of title 31, United States Code,
13 is amended by striking “Overseas Private Investment Cor-
14 poration” and inserting “United States International De-
15 velopment Finance Corporation”.

16 (v) ENERGY INDEPENDENCE AND SECURITY ACT OF
17 2007.—Title IX of the Energy Independence and Security
18 Act of 2007 (42 U.S.C. 17321 et seq.) is amended—

19 (1) in section 914 (42 U.S.C. 17334)—

20 (A) in the section heading, by striking
21 “**OVERSEAS PRIVATE INVESTMENT COR-**
22 **PORATION**” and inserting “**UNITED STATES**
23 **INTERNATIONAL DEVELOPMENT FINANCE**
24 **CORPORATION**”;

1 (B) in subsection (a), in the matter pre-
2 ceding paragraph (1), by striking “Overseas
3 Private Investment Corporation” and inserting
4 “United States International Development Fi-
5 nance Corporation”; and

6 (C) in subsection (b), in the matter pre-
7 ceding paragraph (1), by striking “Overseas
8 Private Investment Corporation shall include in
9 its annual report required under section 240A
10 of the Foreign Assistance Act of 1961 (22
11 U.S.C. 2200a)” and inserting “United States
12 International Development Finance Corporation
13 shall include in its annual report required under
14 section 403 of the Better Utilization of Invest-
15 ments Leading to Development Act of 2018”;
16 and

17 (2) in section 916(a)(2)(I) (42 U.S.C.
18 17336(a)(2)(I)), by striking “Overseas Private In-
19 vestment Corporation:” and inserting “United
20 States International Development Finance Corpora-
21 tion;”.

1 (w) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect at the end of the transition
3 period.

Passed the House of Representatives July 17, 2018.

Attest:

Clerk.

115TH CONGRESS
2^D SESSION

H. R. 5105

AN ACT

To establish the United States International Development Finance Corporation, and for other purposes.