

(8) to complement and be guided by overall United States foreign policy, development, and national security objectives, taking into account the priorities and needs of countries receiving support.

(Pub. L. 115-254, div. F, title I, § 1411, Oct. 5, 2018, 132 Stat. 3486.)

§ 9612. United States International Development Finance Corporation

(a) Establishment

There is established in the executive branch the United States International Development Finance Corporation (in this chapter referred to as the “Corporation”), which shall be a wholly owned Government corporation for purposes of chapter 91 of title 31 under the foreign policy guidance of the Secretary of State.

(b) Purpose

The purpose of the Corporation shall be to mobilize and facilitate the participation of private sector capital and skills in the economic development of less developed countries, as described in subsection (c), and countries in transition from nonmarket to market economies, in order to complement the development assistance objectives, and advance the foreign policy interests, of the United States. In carrying out its purpose, the Corporation, utilizing broad criteria, shall take into account in its financing operations the economic and financial soundness and development objectives of projects for which it provides support under subchapter II of this chapter.

(c) Less developed country focus

(1) In general

The Corporation shall prioritize the provision of support under subchapter II of this chapter in less developed countries with a low-income economy or a lower-middle-income economy.

(2) Support in upper-middle-income countries

The Corporation shall restrict the provision of support under subchapter II of this chapter in a less developed country with an upper-middle-income economy unless—

(A) the President certifies to the appropriate congressional committees that such support furthers the national economic or foreign policy interests of the United States; and

(B) such support is designed to produce significant developmental outcomes or provide developmental benefits to the poorest population of that country.

(Pub. L. 115-254, div. F, title I, § 1412, Oct. 5, 2018, 132 Stat. 3486.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this division”, meaning division F of Pub. L. 115-254, Oct. 5, 2018, 132 Stat. 3485, which is classified principally to this chapter. For complete classification of division F to the Code, see Short Title note set out under section 9601 of this title and Tables.

§ 9613. Management of Corporation

(a) Structure of Corporation

There shall be in the Corporation a Board of Directors (in this chapter referred to as the

“Board”), a Chief Executive Officer, a Deputy Chief Executive Officer, a Chief Risk Officer, a Chief Development Officer, and such other officers as the Board may determine.

(b) Board of Directors

(1) Duties

All powers of the Corporation shall vest in and be exercised by or under the authority of the Board. The Board—

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

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

(C) shall develop, in consultation with stakeholders, other interested parties, and the appropriate congressional committees, a publicly available policy with respect to consultations, hearings, and other forms of engagement in order to provide for meaningful public participation in the Board’s activities.

(2) Membership of Board

(A) In general

The Board shall consist of—

(i) the Chief Executive Officer of the Corporation;

(ii) the officers specified in subparagraph (B); and

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

(I) one individual should be appointed from among a list of at least 5 individuals submitted by the majority leader of the Senate after consultation with the chairman of the Committee on Foreign Relations of the Senate;

(II) one individual should be appointed from among a list of at least 5 individuals submitted by the minority leader of the Senate after consultation with the ranking member of the Committee on Foreign Relations of the Senate;

(III) one individual should be appointed from among a list of at least 5 individuals submitted by the Speaker of the House of Representatives after consultation with the chairman of the Committee on Foreign Affairs of the House of Representatives; and

(IV) one individual should be appointed from among a list of at least 5 individuals submitted by the minority leader of the House of Representatives after consultation with the ranking member of the Committee on Foreign Affairs of the House of Representatives.

(B) Officers specified

(i) In general

The officers specified in this subparagraph are the following:

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

(II) The Administrator of the United States Agency for International Development or a designee of the Administrator.

(III) The Secretary of the Treasury or a designee of the Secretary.

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

(ii) Requirements for designees

A designee under clause (i) shall be selected from among officers—

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

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

(III) who is designated by and serving at the pleasure of the President.

(C) Requirements for nongovernment members

A member of the Board described in subparagraph (A)(iii)—

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

(ii) shall have relevant experience, which may include experience relating to the private sector, the environment, labor organizations, or international development, to carry out the purpose of the Corporation;

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

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

(v) shall be compensated at a rate equivalent to that of level IV of the Executive Schedule under section 5315 of title 5 when engaged in the business of the Corporation; and

(vi) may be paid per diem in lieu of subsistence at the applicable rate under the Federal Travel Regulation under subtitle F of title 41, Code of Federal Regulations, from time to time, while away from the home or usual place of business of the member.

(3) Chairperson

The Secretary of State, or the designee of the Secretary under paragraph (2)(B)(i)(I), shall serve as the Chairperson of the Board.

(4) Vice chairperson

The Administrator of the United States Agency for International Development, or the designee of the Administrator under paragraph (2)(B)(i)(II), shall serve as the Vice Chairperson of the Board.

(5) Quorum

Five members of the Board shall constitute a quorum for the transaction of business by the Board.

(c) Public hearings

The Board shall hold at least 2 public hearings each year in order to afford an opportunity for any person to present views with respect to whether—

(1) the Corporation is carrying out its activities in accordance with this chapter; and

(2) any support provided by the Corporation under subchapter II of this chapter in any country should be suspended, expanded, or extended.

(d) Chief Executive Officer

(1) Appointment

There shall be in the Corporation a Chief Executive Officer, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall serve at the pleasure of the President.

(2) Authorities and duties

The Chief Executive Officer shall be responsible for the management of the Corporation and shall exercise the powers and discharge the duties of the Corporation subject to the bylaws, rules, regulations, and procedures established by the Board.

(3) Relationship to Board

The Chief Executive Officer shall report to and be under the direct authority of the Board.

(4) Omitted

(e) Deputy Chief Executive Officer

There shall be in the Corporation a Deputy Chief Executive Officer, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall serve at the pleasure of the President.

(f) Chief Risk Officer

(1) Appointment

Subject to the approval of the Board, the Chief Executive Officer of the Corporation shall appoint a Chief Risk Officer, from among individuals with experience at a senior level in financial risk management, who—

(A) shall report directly to the Board; and

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

(2) Duties

The Chief Risk Officer shall, in coordination with the audit committee of the Board established under section 9651 of this title, develop, implement, and manage a comprehensive process for identifying, assessing, monitoring, and limiting risks to the Corporation, including the overall portfolio diversification of the Corporation.

(g) Chief Development Officer

(1) Appointment

Subject to the approval of the Board, the Chief Executive Officer, with the concurrence of the Administrator of the United States Agency for International Development, shall appoint a Chief Development Officer, from among individuals with experience in development, who—

(A) shall report directly to the Board; and

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

(2) Duties

The Chief Development Officer shall—

(A) coordinate the Corporation's development policies and implementation efforts

with the United States Agency for International Development, the Millennium Challenge Corporation, and other relevant United States Government departments and agencies, including directly liaising with missions of the United States Agency for International Development, to ensure that departments, agencies, and missions have training, awareness, and access to the Corporation's tools in relation to development policy and projects in countries;

(B) under the guidance of the Chief Executive Officer, manage employees of the Corporation that are dedicated to structuring, monitoring, and evaluating transactions and projects co-designed with the United States Agency for International Development and other relevant United States Government departments and agencies;

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

(D) manage the responsibilities of the Corporation under paragraphs (1) and (4) of section 9652(b) of this title and paragraphs (1)(A) and (3)(A) of section 9653(b) of this title;

(E) coordinate and implement the activities of the Corporation under section 9655 of this title; and

(F) be an ex officio member of the Development Advisory Council established under subsection (i) and participate in or send a representative to each meeting of the Council.

(h) Officers and employees

(1) In general

Except as otherwise provided in this section, officers, employees, and agents shall be selected and appointed by the Corporation, and shall be vested with such powers and duties as the Corporation may determine.

(2) Administratively determined employees

(A) Appointment; compensation; removal

Of officers and employees employed by the Corporation under paragraph (1), not more than 50 may be appointed, compensated, or removed without regard to title 5.

(B) Reinstatement

Under such regulations as the President may prescribe, officers and employees appointed to a position under subparagraph (A) may be entitled, upon removal from such position (unless the removal was for cause), to reinstatement to the position occupied at the time of appointment or to a position of comparable grade and salary.

(C) Additional positions

Positions authorized by subparagraph (A) shall be in addition to those otherwise authorized by law, including positions authorized under section 5108 of title 5.

(D) Rates of pay for officers and employees

The Corporation may set and adjust rates of basic pay for officers and employees ap-

pointed under subparagraph (A) without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, relating to classification of positions and General Schedule pay rates, respectively.

(3) Liability of employees

(A) In general

An individual who is a member of the Board or an officer or employee of the Corporation has no liability under this chapter with respect to any claim arising out of or resulting from any act or omission by the individual within the scope of the employment of the individual in connection with any transaction by the Corporation.

(B) Rule of construction

Subparagraph (A) shall not be construed to limit personal liability of an individual for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of the individual's employment.

(C) Conflicts of interest

The Corporation shall establish and publish procedures for avoiding conflicts of interest on the part of officers and employees of the Corporation and members of the Development Advisory Council established under subsection (i).

(D) Savings provision

This paragraph shall not be construed—

(i) to affect—

(I) any other immunities and protections that may be available to an individual described in subparagraph (A) under applicable law with respect to a transaction described in that subparagraph; or

(II) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than an individual described in subparagraph (A) participating in such a transaction; or

(ii) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees not described in this paragraph.

(i) Development Advisory Council

(1) In general

There is established a Development Advisory Council (in this subsection referred to as the "Council") to advise the Board on development objectives of the Corporation.

(2) Membership

Members of the Council shall be appointed by the Board, on the recommendation of the Chief Executive Officer and the Chief Development Officer, and shall be composed of not more than 9 members broadly representative of nongovernmental organizations, think tanks, advocacy organizations, foundations, and other institutions engaged in international development.

(3) Functions

The Board shall call upon members of the Council, either collectively or individually, to

advise the Board regarding the extent to which the Corporation is meeting its development mandate and any suggestions for improvements in with respect to meeting that mandate, including opportunities in countries and project development and implementation challenges and opportunities.

(4) Federal Advisory Committee Act

The Council shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 115–254, div. F, title I, §1413, Oct. 5, 2018, 132 Stat. 3487.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a), (b)(1)(A), and (c)(1), (3)(A), was in the original “this division”, meaning division F of Pub. L. 115–254, Oct. 5, 2018, 132 Stat. 3485, which is classified principally to this chapter. For complete classification of division F to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (i)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section is comprised of section 1413 of Pub. L. 115–254. Par. (4) of subsec. (d) of section 1413 of Pub. L. 115–254 amended section 5313 of Title 5, Government Organization and Employees.

§ 9614. Independent accountability mechanism

(a) In general

The Board shall establish a transparent and independent accountability mechanism.

(b) Functions

The independent accountability mechanism established pursuant to subsection (a) shall—

- (1) annually evaluate and report to the Board and Congress regarding compliance with environmental, social, labor, human rights, and transparency standards, consistent with Corporation statutory mandates;
- (2) provide a forum for resolving concerns regarding the impacts of specific Corporation-supported projects with respect to such standards; and
- (3) provide advice regarding Corporation projects, policies, and practices.

(Pub. L. 115–254, div. F, title I, §1415, Oct. 5, 2018, 132 Stat. 3492.)

SUBCHAPTER II—AUTHORITIES

§ 9621. Authorities relating to provision of support

(a) In general

The authorities in this subchapter shall only be exercised to—

- (1) carry out of¹ the policy of the United States in section 9611 of this title and the purpose of the Corporation in section 9612 of this title;
- (2) mitigate risks to United States taxpayers by sharing risks with the private sector and qualifying sovereign entities through co-financing and structuring of tools; and

(3) ensure that support provided under this subchapter is additional to private sector resources by mobilizing private capital that would otherwise not be deployed without such support.

(b) Lending and guaranties

(1) In general

The Corporation may make loans or guaranties upon such terms and conditions as the Corporation may determine.

(2) Denomination

Loans and guaranties issued under paragraph (1) may be denominated and repayable in United States dollars or foreign currencies. Foreign currency denominated loans and guaranties should only be provided if the Board determines there is a substantive policy rationale for such loans and guaranties.

(3) Applicability of Federal Credit Reform Act of 1990

Loans and guaranties issued under paragraph (1) shall be subject to the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(c) Equity investments

(1) In general

The Corporation may, as a minority investor, support projects with funds or use other mechanisms for the purpose of purchasing, and may make and fund commitments to purchase, invest in, make pledges in respect of, or otherwise acquire, equity or quasi-equity securities or shares or financial interests of any entity, including as a limited partner or other investor in investment funds, upon such terms and conditions as the Corporation may determine.

(2) Denomination

Support provided under paragraph (1) may be denominated and repayable in United States dollars or foreign currency. Foreign currency denominated support provided by paragraph (1) should only be provided if the Board determines there is a substantive policy rationale for such support.

(3) Guidelines and criteria

The Corporation shall develop guidelines and criteria to require that the use of the authority provided by paragraph (1) with respect to a project has a clearly defined development and foreign policy purpose, taking into account the following objectives:

- (A) The support for the project would be more likely than not to substantially reduce or overcome the effect of an identified market failure in the country in which the project is carried out.
- (B) The project would not have proceeded or would have been substantially delayed without the support.
- (C) The support would meaningfully contribute to transforming local conditions to promote the development of markets.
- (D) The support can be shown to be aligned with commercial partner incentives.
- (E) The support can be shown to have significant developmental impact and will con-

¹ So in original. The word “of” probably should not appear.