

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 subsecs. (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.

tribute to long-term commercial sustainability.

(F) The support furthers the policy of the United States described in section 9611 of this title.

(4) Limitations on equity investments

(A) Per project limit

The aggregate amount of support provided under this subsection with respect to any project shall not exceed 30 percent of the aggregate amount of all equity investment made to the project at the time that the Corporation approves support of the project.

(B) Total limit

Support provided pursuant to this subsection shall be limited to not more than 35 percent of the Corporation's aggregate exposure on the date that such support is provided.

(5) Sales and liquidation of position

The Corporation shall seek to sell and liquidate any support for a project provided under this subsection as soon as commercially feasible, commensurate with other similar investors in the project and taking into consideration the national security interests of the United States.

(6) Timetable

The Corporation shall create a project-specific timetable for support provided under paragraph (1).

(d) Insurance and reinsurance

The Corporation may issue insurance or reinsurance, upon such terms and conditions as the Corporation may determine, to private sector entities and qualifying sovereign entities assuring protection of their investments in whole or in part against any or all political risks such as currency inconvertibility and transfer restrictions, expropriation, war, terrorism, civil disturbance, breach of contract, or nonhonoring of financial obligations.

(e) Promotion of and support for private investment opportunities

(1) In general

In order to carry out the purpose of the Corporation described in section 9612(b) of this title, the Corporation may initiate and support, through financial participation, incentive grant, or otherwise, and on such terms and conditions as the Corporation may determine, feasibility studies for the planning, development, and management of, and procurement for, potential bilateral and multilateral development projects eligible for support under this subchapter, including training activities undertaken in connection with such projects, for the purpose of promoting investment in such projects and the identification, assessment, surveying, and promotion of private investment opportunities, utilizing wherever feasible and effective, the facilities of private investors.

(2) Contributions to costs

The Corporation shall, to the maximum extent practicable, require any person receiving

funds under the authorities of this subsection to—

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

(B) reimburse the Corporation those funds provided under this section, if the person succeeds in project implementation.

(f) Special projects and programs

The Corporation may administer and manage special projects and programs in support of specific transactions undertaken by the Corporation, including programs of financial and advisory support that provide private technical, professional, or managerial assistance in the development of human resources, skills, technology, capital savings, or intermediate financial and investment institutions or cooperatives, and including the initiation of incentives, grants, or studies for energy, women's economic empowerment, microenterprise households, or other small business activities.

(g) Enterprise funds

(1) In general

The Corporation may, following consultation with the Secretary of State, the Administrator of the United States Agency for International Development, and the heads of other relevant departments or agencies, establish and operate enterprise funds in accordance with this subsection.

(2) Private character of funds

Nothing in this section shall be construed to make an enterprise fund an agency or establishment of the United States Government, or to make the officers, employees, or members of the Board of Directors of an enterprise fund officers or employees of the United States for purposes of title 5.

(3) Purposes for which support may be provided

The Corporation, subject to the approval of the Board, may designate private, nonprofit organizations as eligible to receive support under this subchapter for the following purposes:

(A) To promote development of economic freedom and private sectors, including small- and medium-sized enterprises and joint ventures with the United States and host country participants.

(B) To facilitate access to credit to small- and medium-sized enterprises with sound business plans in countries where there is limited means of accessing credit on market terms.

(C) To promote policies and practices conducive to economic freedom and private sector development.

(D) To attract foreign direct investment capital to further promote private sector development and economic freedom.

(E) To complement the work of the United States Agency for International Development and other donors to improve the overall business-enabling environment, financing the creation and expansion of the private business sector.

(F) To make financially sustainable investments designed to generate measurable social benefits and build technical capacity in addition to financial returns.

(4) Operation of funds

(A) Expenditures

Funds made available to an enterprise fund shall be expended at the minimum rate necessary to make timely payments for projects and activities carried out under this subsection.

(B) Administrative expenses

Not more than 3 percent per annum of the funds made available to an enterprise fund may be obligated or expended for the administrative expenses of the enterprise fund.

(5) Board of Directors

Each enterprise fund established under this subsection should be governed by a Board of Directors comprised of private citizens of the United States or the host country, who—

(A) shall be appointed by the President after consultation with the chairmen and ranking members of the appropriate congressional committees; and

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

(6) Majority member requirement

The majority of the members of the Board of Directors shall be United States citizens who shall have relevant experience relating to the purposes described in paragraph (3).

(7) Reports

Not later than one year after the date of the establishment of an enterprise fund under this subsection, and annually thereafter until the enterprise fund terminates in accordance with paragraph (10), the Board of Directors of the enterprise fund shall—

(A) submit to the appropriate congressional committees a report—

(i) detailing the administrative expenses of the enterprise fund during the year preceding the submission of the report;

(ii) describing the operations, activities, engagement with civil society and relevant local private sector entities, development objectives and outcomes, financial condition, and accomplishments of the enterprise fund during that year;

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

(iv) describing how audits conducted under paragraph (8) are informing the operations and activities of the enterprise fund; and

(B) publish, on a publicly available internet website of the enterprise fund, each report required by subparagraph (A).

(8) Oversight

(A) Inspector general performance audits

(i) In general

The Inspector General of the Corporation shall conduct periodic audits of the activi-

ties of each enterprise fund established under this subsection.

(ii) Consideration

In conducting an audit under clause (i), the Inspector General shall assess whether the activities of the enterprise fund—

(I) support the purposes described in paragraph (3);

(II) result in profitable private sector investing; and

(III) generate measurable social benefits.

(B) Recordkeeping requirements

The Corporation shall ensure that each enterprise fund receiving support under this subsection—

(i) keeps separate accounts with respect to such support; and

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

(9) Return of funds to Treasury

Any funds resulting from any liquidation, dissolution, or winding up of an enterprise fund, in whole or in part, shall be returned to the Treasury of the United States.

(10) Termination

The authority of an enterprise fund to provide support under this subsection shall terminate on the earlier of—

(A) the date that is 10 years after the date of the first expenditure of amounts from the enterprise fund; or

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

(h) Supervision of support

Support provided under this subchapter shall be subject to section 2382(c) of this title.

(i) Small business development

(1) In general

The Corporation shall undertake, in cooperation with appropriate departments, agencies, and instrumentalities of the United States as well as private entities and others, to broaden the participation of United States small businesses and cooperatives and other small United States investors in the development of small private enterprise in less developed friendly countries or areas.

(2) Outreach to minority-owned and women-owned businesses

(A) In general

The Corporation shall collect data on the involvement of minority- and women-owned businesses in projects supported by the Corporation, including—

(i) the amount of insurance and financing provided by the Corporation to such businesses in connection with projects supported by the Corporation; and

(ii) to the extent such information is available, the involvement of such businesses in procurement activities conducted or supported by the Corporation.

(B) Inclusion in annual report

The Corporation shall include, in its annual report submitted to Congress under sec-

tion 9653 of this title, the aggregate data collected under this paragraph, in such form as to quantify the effectiveness of the Corporation's outreach activities to minority- and women-owned businesses.

(Pub. L. 115-254, div. F, title II, §1421, Oct. 5, 2018, 132 Stat. 3492.)

TERMINATION OF SECTION

For termination of section 7 years after Oct. 5, 2018, see section 9624 of this title.

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b)(3), is title V of Pub. L. 93-344 as added by Pub. L. 101-508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388-609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

§ 9622. Terms and conditions

(a) In general

Except as provided in subsection (b), support provided by the Corporation under this subchapter shall be on such terms and conditions as the Corporation may prescribe.

(b) Requirements

The following requirements apply to support provided by the Corporation under this subchapter:

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

(A) to alleviate a credit market imperfection; or

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

(2) The final maturity of a loan made or guaranteed by the Corporation shall not exceed the lesser of—

(A) 25 years; or

(B) debt servicing capabilities of the project to be financed by the loan (as determined by the Corporation).

(3) The Corporation shall, with respect to providing any loan guaranty to a project, require the parties to the project to bear the risk of loss in an amount equal to at least 20 percent of the guaranteed support by the Corporation in the project.

(4) The Corporation may not make or guarantee a loan unless the Corporation determines that the borrower or lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(5) The interest rate for direct loans and interest supplements on guaranteed loans shall be set by reference to a benchmark interest rate (yield) on marketable Treasury securities or other widely recognized or appropriate benchmarks with a similar maturity to the loans being made or guaranteed, as deter-

mined in consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury. The Corporation shall establish appropriate minimum interest rates for loans, guaranties, and other instruments as necessary.

(6) The minimum interest rate for new loans as established by the Corporation shall be adjusted periodically to take account of changes in the interest rate of the benchmark financial instrument.

(7)(A) The Corporation shall set fees or premiums for support provided under this subchapter at levels that minimize the cost to the Government while supporting achievement of the objectives of support.

(B) The Corporation shall review fees for loan guaranties periodically to ensure that the fees assessed on new loan guaranties are at a level sufficient to cover the Corporation's most recent estimates of its costs.

(8) Any loan guaranty provided by the Corporation shall be conclusive evidence that—

(A) the guaranty has been properly obtained;

(B) the loan qualified for the guaranty; and

(C) but for fraud or material misrepresentation by the holder of the guaranty, the guaranty is presumed to be valid, legal, and enforceable.

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

(10) The Corporation may not make loans or loan guaranties except to the extent that budget authority to cover the costs of the loans or guaranties is provided in advance in an appropriations Act, as required by section 661c of title 2.

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

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

(Pub. L. 115-254, div. F, title II, §1422, Oct. 5, 2018, 132 Stat. 3497.)

TERMINATION OF SECTION

For termination of section 7 years after Oct. 5, 2018, see section 9624 of this title.

§ 9623. Payment of losses

(a) Payments for defaults on guaranteed loans

(1) In general

If the Corporation determines that the holder of a loan guaranteed by the Corporation suffers a loss as a result of a default by a borrower on the loan, the Corporation shall pay to the holder the percent of the loss, as specified in the guaranty contract, after the holder of the loan has made such further collection efforts and instituted such enforcement proceedings as the Corporation may require.