

CRS Report for Congress

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Overseas Private Investment Corporation: Environmental Review Procedures

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Summary

Congress requires the Overseas Private Investment Corporation (OPIC) and other U.S. agencies whose programs have the potential for adversely affecting the environment abroad, to develop and follow an established set of guidelines to mitigate the environmental impact of its programs. To comply with this directive, OPIC has developed a multi-stage process to screen proposed projects to determine if they meet the Corporation's environmental standards. OPIC conducts environmental impact assessments of all applicants for its programs and is directed by Congress to protect the environment and natural resources of developing countries. In particular, Congress has directed OPIC to protect tropical forests, endangered species, and national parks. This report will be updated as warranted by events.

Background

The Overseas Private Investment Corporation (OPIC)¹ was established in 1969 and began operations in 1971 as an independent U.S. government agency charged with providing project financing, investment insurance, and other services for U.S. businesses investing in developing nations.² At the time OPIC was established, Congress was conducting an overall review of U.S. aid programs, especially large infrastructure projects, and was exploring alternative ways to assist developing countries. In his first message to Congress on aid, President Nixon recommended the creation of OPIC to assume the investment guaranty and promotion functions that were being conducted by the Agency for International Development (AID). President Nixon also directed that

¹ For additional information, see OPIC's Internet address [<http://www.opic.gov/>].

² Foreign Assistance Act of 1961 (P.L. 87-195); Executive Order No. 11579, January 19, 1971, 36 F.R. 969, as amended.

OPIC would provide “businesslike management of investment incentives” to contribute to the economic and social progress of developing nations.³

In creating OPIC, the Nixon Administration indicated that it was not attempting to end official U.S. foreign assistance. Instead, the administration mentioned that, “private capital and technical assistance cannot substitute for government assistance programs,” but the combination can provide, “official aid on the one hand, and private investment and technical assistance on the other.” Private investment activities, however, were meant to complement the official assistance programs and, thereby, multiply the benefits of both. In addition, market-oriented private investment was viewed as an antidote to the government-oriented aid projects that were viewed by some as costly and inefficient. OPIC was created as a first step in the eventual overhaul of the entire U.S. aid program. In 1973, this overhaul was completed as the United States largely abandoned infrastructure building and other large capital projects in favor of humanitarian aid to meet basic human needs.

OPIC’s Environmental Mandate

Congress has adopted various measures that require OPIC, and other government agencies whose operations have an effect beyond U.S. borders, to take into account the impact their programs may have on the environment of developing countries. These measures include:

In 1972, through P.L. 92-226, which is codified in 22 USC 2199(g) and was amended extensively in 1985 through P.L. 99-204, Congress required OPIC to conduct environmental impact assessments:

The requirements of section 2151p(c) of this title relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this subpart in connection with a project in a country.

(h) Preparation, maintenance, and contents of development impact profile for investment projects; development of criteria for evaluating projects. In order to carry out the policy set forth in paragraph (1) of the second undesignated paragraph of section 2191 of this title, the Corporation shall prepare and maintain for each investment project it insures, finances, or reinsures, a development impact profile consisting of data appropriate to measure the projected and actual effects of such project on development. Criteria for evaluating projects shall be developed in consultation with the Agency for International Development.

In 1985, through P.L. 99-204, Congress amended 22 USC Section 2191 to require: The Corporation, in determining whether to provide insurance, financing, or reinsurance for a project, shall especially -

(3) ensure that the project is consistent with the provisions of section 2151p of this title, section 2151p-1 of this title, and section 2151q of this title [originally designated as sections 117, 118, and 119; redesignated by the Special Foreign Assistance Act of

³ *Public Papers of the Presidents: Richard Nixon*. Washington, U.S. Govt. Print. Off., 1969. p. 412.

1986] relating to the environment and natural resources of, and tropical forests and endangered species in, developing countries, and consistent with the intent of regulations issued pursuant to section 2151p of this title, section 2151p-1 of this title, and section 2151q of this title.

OPIC is subject to three provisions of the Foreign Assistance Act, the first of which is contained in 22 USC Section 2151p. This provision was adopted in 1979 through P.L. 96-53 in accordance with Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended. The section provides for protecting the environment and natural resources of developing countries. It authorizes the President to furnish assistance to developing countries to assist them in protecting and managing their environment and natural resources.

The next provision, 22 USC Section 2151p-1, adopted by Congress through P.L. 87-195, Dec 30, 1969, as amended, provides for protection of tropical forests, by placing a high priority on “conservation and sustainable management of tropical forests” and to “the fullest extent feasible” supporting programs and other efforts that carry out this objective.

The final section, 22 USC Section 2151q, was adopted through P.L. 98-164 as the "International Environment Protection Act of 1983," and concerns preserving and protecting endangered species as another consideration in U.S. programs abroad.

In addition to the provisions of the Foreign Assistance Act, Congress added 22 USC Section 2191(3)(n) to OPIC’s charter in 1985 through P.L. 99-204. The provision states that:

[the Corporation, utilizing broad criteria, shall undertake] - to refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas.

In 1985, through P.L. 99-204, Congress also added 22 USC Section 2197(m)(1) to OPIC’s environmental requirements.

Before providing insurance, reinsurance, guarantees, or financing under this subpart for any environmentally sensitive investment in connection with a project in a country, the Corporation shall notify appropriate government officials of that country of -

(A) all guidelines and other standards adopted by the International Bank for Reconstruction and Development and any other international organization relating to the public health or safety or the environment which are applicable to the project; and
 (B) to the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States. The notification under the preceding sentence shall include a summary of the guidelines, standards, and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review, or study prepared with respect to the investment pursuant to section 2199(g) of this title.

In 1999, Congress also directed OPIC through P.L. 106-158, in 22 USC Section 2191a(b), to decline its services if it determines that an activity will have an adverse environmental impact that is “sensitive, diverse, or unprecedented”:

The Board of Directors of the Corporation shall not vote in favor of any action proposed to be taken by the Corporation that is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented, unless for at least 60 days before the date of the vote - (1) an environmental impact assessment or initial environmental audit, analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has been completed by the project applicant and made available to the Board of Directors; and (2) such assessment or audit has been made available to the public of the United States, locally affected groups in the host country, and host country nongovernmental organizations.

OPIC is also subject to Executive Order No. 12144 (44FR 1957) entitled “Environmental Effects Abroad of Major Federal Actions.” The Executive Order requires federal agencies that take actions that are subject to the Order to implement procedures that are consistent with the Order. On September 4, 1979, OPIC adopted a series of procedures to comply with the Executive Order. These procedures are contained in OPIC’s *Environmental Handbook*, which is available on the Internet.⁴

OPIC’s Environmental Procedures

In accordance with the requirement to develop procedures for assessing the environmental impact of its programs, OPIC has developed a multi-stage process to screen proposed projects to determine if they meet the Corporation’s environmental standards. First, OPIC screens the proposed project to determine if it violates any categorical prohibitions.⁵ If the project is determined not to fall within one of the categorical prohibitions, it is subject to an environmental screening to determine the level of environmental impact that is associated with the industrial sector or site that is involved.

OPIC’s Environmental Unit assigns a category from A to F to projects that depends on the level of public disclosure that is required to satisfy OPIC’s environmental requirements. Category A projects are those that are deemed likely to have “significant adverse environmental impacts” that are sensitive (irreversible; affect sensitive ecosystems; or involve involuntary resettlement).⁶ These projects require a full-scale

⁴ OPIC’s web address is [<http://www.opic.gov/>].

⁵ Projects that would be categorically prohibited for environmental reasons would be: infrastructure and extractive projects located in primary tropical forests; projects involving the construction of “large dams” that “significantly and irreversibly” affect the environment; projects that involve the commercial manufacturing of ozone-depleting substances or pollutants that are banned by international agreement; and projects that require the resettlement of 5,000 or more persons.

⁶ There are over two dozen industries listed in this category. These industrial sectors are: large-scale industrial plants; industrial estates; crude oil refineries, large thermal power projects; iron and steel smelting; chemicals; projects with a occupational or health risk; transportation infrastructure; major oil and gas developments; disposal of toxic or dangerous wastes; landfill; (continued...)

environmental assessment. Category B projects are those that are not classified in any other category. Category C projects are those projects that are expected to have minimal or no adverse environmental impact. Category D projects are comprised of financial intermediaries that make investments in or are providing financing to certifiable projects or enterprises. Category E projects include small-scale, stand-alone business ventures that have demonstrable environmentally beneficial impact. Category F projects are comprised of those projects that OPIC will not support due to U.S. statutory restrictions or a determination that the project will have a “major or unreasonable” adverse impact on the environment, health or safety as set forth in OPIC’s authorizing statutes.

In the next step, OPIC requires applicants with projects classified as Category A projects to submit an environmental assessment,⁷ principally either an Environmental Impact Assessment (EIA)⁸ or an Initial Environmental Audit (EAU).⁹ By statute, OPIC is required to provide some degree of environmental assessment to every project that it considers for insurance or finance and it cannot provide a final commitment to a project until its environmental assessment is complete. Category A projects that are subject to an Environmental Impact Assessment or an Initial Environmental Audit are required to make the reports available to the public and are published on OPIC’s Internet website. OPIC then conducts an internal assessment of the project based on the Environmental Impact Assessment and reviews any public comments.

Category B projects are subject to an internal OPIC assessment based on information supplied by the applicant. Since Category C projects are not expected to affect the environment, they are not subjected to an environmental assessment.

⁶ (...continued)

dam and reservoir construction; pulp and paper manufacturing; mining; offshore hydrocarbon production; petroleum storage; forestry logging; wastewater treatment; solid waste processing; large-scale tourism development; large-scale power transmission; large-scale reclamation; large-scale agriculture; projects with major impacts on people or serious socioeconomic concerns; and projects that are near sensitive locations.

⁷ The environmental assessment is the main tool OPIC uses to evaluate the environmental impact of a project and to improve the project by preventing, minimizing, mitigating, remediation, or compensating for any adverse impact as a condition of OPIC support. The process of environmental assessment involves identifying any potential adverse environmental effects; assessing these effects and comparing them with the potential impact of alternative approaches; designing and implementing measures and plans to avoid, minimize, or compensate for adverse effects; and designing and implementing associated management and monitoring measures. These assessments include Environmental Impact Assessments, Environmental Management and Monitoring Plans, Initial Environmental Audits, Environmental Remediation Plans, and Environmental Impact Statements as directed by statute and Executive Order 12114.

⁸ An Environmental Impact Assessment is a comprehensive assessment of the diverse impact a project has on nature and ecology. It includes a detailed description of the pre-existing conditions, all project activities that have a potential environmental impact, and the net effect of the project.

⁹ An Initial Environmental Audit is designed to identify pre-existing adverse environmental, health, or safety conditions at a facility or site on which industrial activity previously occurred that could affect the future impact of a project.

After reviewing the project, OPIC's environmental staff also assesses the standards and conditions for mitigating the impact of the project that are applicable for OPIC's support. OPIC uses a set of environmental standards adopted by a number of international organizations, such as the World Bank, the World Health Organization, and the Forest Stewardship Council to determine if a project will pose an unreasonable or major environmental, health or safety hazard, or will result in significant degradation of national parks or similar protected areas. In addition to complying with the guidelines set out by the World Bank, all projects submitted to OPIC must meet host country environmental regulations. OPIC also applies a set of standards to projects that involve privatizing existing facilities, or investments in existing large, diversified enterprises. Such conditions are discussed with the applicant and are included as representations, warranties and covenants in the loan agreement or political risk insurance contract.

OPIC reserves the right to monitor projects throughout the term of the OPIC loan agreement or insurance contract to make sure the applicant abides by any conditions that have been attached to the approval. In addition, OPIC routinely conducts on-site monitoring of projects to assess environmental effects and U.S. economic and host country development effects. OPIC conducts compliance audits after a project begins construction or is operational to determine if the project is complying with all environmental and social conditions attached with the project and to assess the methodology that is used for all projects that are monitored by the project developers. Category A projects are also required to conduct at least one independent environmental audit during the first three years of OPIC support.