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[Report No. 110-273]

IN THE SENATE OF THE UNITED STATES

JULY 24, 2007

Received; read twice and referred to the Committee on Foreign Relations

MARCH 4, 2008

Reported by Mr. BIDEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To reauthorize the programs of the Overseas Private
Investment 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,*
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Overseas Private In-
- 5 vestment Corporation Reauthorization Act of 2007”.
- 6 **SEC. 2. FINDINGS.**
- 7 The Congress finds the following:

1 (1) Since its founding in 1971, the Overseas
2 Private Investment Corporation (in this section re-
3 ferred to as “OPIC”) has helped to mobilize and fa-
4 cilitate private capital by United States investors in
5 developing and emerging market countries in sup-
6 port of United States foreign policy and development
7 goals.

12 (3) OPIC assistance should not be provided to
13 those who support enemies of the United States.

14 (4) OPIC assistance is a privilege and should be
15 granted to persons that, along with their affiliated
16 companies, demonstrate responsible and sustainable
17 business practices, particularly with regard to the
18 environment, international worker rights, and efforts
19 against genocide and nuclear proliferation. Denial of
20 OPIC assistance is not a penalty or sanction.

1 (6) OPIC projects have generated
2 \$71,000,000,000 in United States exports and sup-
3 ported more than 271,000 United States jobs.

4 (7) Projects assisted by OPIC in fiscal year
5 2006 are projected to generate \$1,000,000,000 in
6 United States exports, support more than 2,700
7 United States jobs, and have a positive impact on
8 the United States balance of payments.

9 (8) In fiscal year 2006, 87 percent of all OPIC-
10 supported projects supported small-and-medium-
11 sized businesses in the United States.

12 (9) In an era of limited Federal budgetary re-
13 sources, OPIC has consistently demonstrated an
14 ability to operate on a self-sustaining basis to sup-
15 port United States companies, all at a net cost of
16 zero to the United States taxpayer.

17 (10) OPIC has reserves totaling approximately
18 \$5,300,000,000 and will make an estimated net
19 budget contribution to the international affairs ac-
20 count of \$159,000,000 in fiscal year 2008.

21 **SEC. 3. REAUTHORIZATION OF OPIC PROGRAMS.**

22 Section 235(a)(2) of the Foreign Assistance Act of
23 1961 (22 U.S.C. 2195(a)(2)) is amended by striking
24 “September 30, 2007” and inserting “September 30,
25 2011”.

1 **SEC. 4. PREFERENTIAL CONSIDERATION OF CERTAIN IN-**
2 **VESTMENT PROJECTS.**

3 Section 231(f) of the Foreign Assistance Act of 1961
4 (22 U.S.C. 2191(f)) is amended to read as follows:

5 “(f) to give preferential consideration to invest-
6 ment projects in less developed countries the govern-
7 ments of which are receptive to private enterprise,
8 domestic and foreign, and to projects in countries
9 the governments of which are willing and able to
10 maintain conditions that enable private enterprise to
11 make its full contribution to the development proc-
12 ess;”.

13 **SEC. 5. REQUIREMENTS REGARDING INTERNATIONAL**
14 **WORKER RIGHTS.**

15 (a) **COUNTRY REQUIREMENTS.**—Subsection (a) of
16 section 231A of the Foreign Assistance Act of 1961 (22
17 U.S.C. 2191a(a)) is amended—

18 (1) by amending the subsection heading to read
19 as follows: “**INTERNATIONAL WORKER RIGHTS**”;

20 (2) in paragraph (4), by striking “(4) In” and
21 inserting “(5) **ADDITIONAL DETERMINATION. In**”;
22 and

23 (3) by striking paragraphs (1) through (3) and
24 inserting the following:

25 **“(1) LIMITATION ON OPIIC ACTIVITIES.**—(A)
26 The Corporation may insure, reinsurance, guarantee, or

1 finance a project only if the country in which the
2 project is to be undertaken has made or is making
3 significant progress towards the recognition, adop-
4 tion, and implementation of laws that substantially
5 provide international worker rights, including in any
6 designated zone, or special administrative region or
7 area, in that country.

8 “(B) The Corporation shall also include the fol-
9 lowing language, in substantially the following form,
10 in all contracts which the Corporation enters into
11 with eligible investors to provide financial support
12 under this title:

13 “‘The investor agrees not to take any actions
14 to obstruct or prevent employees of the foreign en-
15 terprise from exercising their international worker
16 rights (as defined in section 238(h) of the Foreign
17 Assistance Act of 1961), and agrees to adhere to the
18 obligations regarding those international worker
19 rights.’

20 “(2) PREFERENCE TO CERTAIN COUNTRIES.—
21 To the degree possible and consistent with its devel-
22 opment objectives, the Corporation shall give pref-
23 erential consideration to projects in countries that
24 have adopted, maintain, and enforce laws that sub-
25 stantially provide international worker rights.

1 “(3) USE OF ANNUAL REPORTS ON INTER-
2 NATIONAL WORKER RIGHTS.—The Corporation shall,
3 in carrying out paragraph (1)(A), use, among other
4 sources, the reports submitted to the Congress pur-
5 suant to section 504 of the Trade Act of 1974. Such
6 other sources include the observations, reports, and
7 recommendations of the International Labor Organi-
8 zation, and other relevant organizations.

9 “(4) INAPPLICABILITY TO HUMANITARIAN AC-
10 TIVITIES.—Paragraph (1) shall not prohibit the Cor-
11 poration from providing any insurance, reinsurance,
12 guaranty, financing, or other assistance for the pro-
13 vision of humanitarian assistance in a country.”.

14 (b) BOARD OF DIRECTORS.—Section 233(b) of the
15 Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) is
16 amended by adding at the end the following: “The selec-
17 tion of the small business, organized labor, and coopera-
18 tive directors should be made, respectively, in consultation
19 with relevant representative organizations.”.

20 (e) DEFINITIONS.—Section 238 of the Foreign As-
21 sistance Act of 1961 (22 U.S.C. 2198) is amended—

22 (1) in subsection (f), by striking “and” after
23 the semicolon;

24 (2) in subsection (g), by striking the period at
25 the end and inserting “; and”; and

(3) by adding at the end the following:

“(h) the term ‘international worker rights’

~~means~~—

4 “(1) internationally recognized worker
5 rights, as defined in section 507(4) of the
6 Trade Act of 1974 (19 U.S.C. 2467(4)); and

7 “(2) the elimination of discrimination with
8 respect to employment and occupation.”.

9 (d) GENERAL PROVISIONS AND POWERS.—Section
10 239 of the Foreign Assistance Act of 1961 (22 U.S.C.
11 § 2199) is amended—

12 (1) in subsection (h), by adding at the end the
13 following: “In addition, the Corporation should con-
14 sult with relevant stakeholders in developing such
15 criteria.”; and

(2) in subsection (i), in the first sentence, by inserting “, including international worker rights,” after “fundamental freedoms”.

19 SEC. 6. ENVIRONMENTAL ASSESSMENTS.

20 Section 231A(b) of the Foreign Assistance Act of
21 1961 (~~22 U.S.C. 2191a(b)~~) is amended to read as follows:

22 **“(b) ENVIRONMENTAL IMPACT.**—The Board of Di-
23 rectors of the Corporation shall not vote in favor of any
24 action proposed to be taken by the Corporation that is

1 likely to have significant adverse environmental impacts,
2 unless for at least 60 days before the date of the vote—

3 “(1) an environmental impact assessment, or
4 initial environmental audit, analyzing the environ-
5 mental impacts of the proposed action and of alter-
6 natives to the proposed action has been completed by
7 the project applicant and made available to the
8 Board of Directors; and

9 “(2) such assessment or audit has been made
10 available to the public of the United States, locally
11 affected groups in the host country, and host coun-
12 try nongovernmental organizations.”.

13 **SEC. 7. COMMUNITY SUPPORT.**

14 Section 237 of the Foreign Assistance Act of 1961
15 (22 U.S.C. 2197) is amended by adding at the end the
16 following:

17 “(p) COMMUNITY SUPPORT.—To the maximum ex-
18 tent practicable, the Corporation shall require the appli-
19 cant for a project that is subject to section 231A(b) to
20 obtain broad community support for the project.”.

21 **SEC. 8. CLIMATE CHANGE MITIGATION ACTION PLAN.**

22 Title IV of chapter 2 of part I of the Foreign Assist-
23 ance Act of 1961 (22 U.S.C. 2291 et seq.) is amended
24 by inserting after section 234A the following new section:

1 **“SEC. 234B. CLIMATE CHANGE MITIGATION.**

2 “(a) **MITIGATION ACTION PLAN.**—The Corporation
3 shall, not later than 180 days after the date of the enact-
4 ment of the Overseas Private Investment Corporation Re-
5 authorization Act of 2007, institute a climate change miti-
6 gation action plan that includes the following:

7 “(1) **CLEAN AND EFFICIENT ENERGY TECH-
8 NOLOGY.**—

9 “(A) **INCREASING ASSISTANCE.**—The Cor-
10 poration shall establish a goal of substantially
11 increasing its support of projects that use, de-
12 velop, or otherwise promote the use of clean en-
13 ergy technologies over the 4-year period begin-
14 ning on the date of the enactment of the Over-
15 seas Private Investment Corporation Reauthor-
16 ization Act of 2007.

17 “(B) **PREFERENTIAL TREATMENT TO
18 PROJECTS.**—The Corporation shall give pref-
19 erential treatment to the evaluation and award-
20 ing of assistance for and provide greater flexi-
21 bility in supporting projects that use, develop,
22 or otherwise promote the use of clean and effi-
23 cient energy technologies.

24 “(2) **ENVIRONMENTAL IMPACT ASSESS-
25 MENTS.**—

1 “(A) GREENHOUSE GAS EMISSIONS.—The
2 Corporation shall, in making an environmental
3 impact assessment for a project under section
4 231A(b), take into account the degree to which
5 the project contributes to the emission of green-
6 house gases.

7 “(B) OTHER DUTIES NOT AFFECTED.—
8 The requirement under subparagraph (A) is in
9 addition to any other requirement, obligation,
10 or duty that the Corporation has.

11 “(3) REPORT TO CONGRESSIONAL COMMIT-
12 TEES.—The Corporation shall, within 180 days after
13 the date of the enactment of the Overseas Private
14 Investment Corporation Reauthorization Act of
15 2007, submit to the Committee on Foreign Affairs
16 of the House of Representatives and the Committee
17 on Foreign Relations of the Senate a report on the
18 plan developed to carry out paragraph (1)(A).
19 Thereafter, the Corporation shall include in its an-
20 nual report under section 240A a discussion of such
21 plan and its implementation.

22 “(b) EXTRACTION INVESTMENTS.—

23 “(1) PRIOR NOTIFICATION TO CONGRESSIONAL
24 COMMITTEES.—The Corporation may not approve
25 any contract of insurance or reinsurance, or any

1 guaranty, or enter into any agreement to provide fi-
2 nancing for any project which significantly involves
3 an extractive industry and in which assistance by the
4 Corporation would be valued at \$10,000,000 or
5 more (including contingent liability), until at least
6 30 days after the Corporation notifies the Com-
7 mittee on Foreign Affairs of the House of Rep-
8 resentatives and the Committee on Foreign Rela-
9 tions of the Senate of such contract or agreement.

10 “(2) COMMITMENT TO EITI PRINCIPLES.—The
11 Corporation may approve a contract of insurance or
12 reinsurance, or any guaranty, or enter into an agree-
13 ment to provide financing to an eligible investor for
14 a project that significantly involves an extractive in-
15 dustry only if—

16 “(A) the eligible investor has agreed to im-
17 plement the Extractive Industries Transparency
18 Initiative principles and criteria, or substan-
19 tially similar principles and criteria; or

20 “(B) the host country where the project is
21 to be carried out has committed to the Extrae-
22 tive Industries Transparency Initiative prin-
23 ciples and criteria, or substantially similar prin-
24 ciples and criteria.

1 “(3) PREFERENCE FOR CERTAIN PROJECTS.—

2 With respect to all projects that significantly involve
3 an extractive industry, the Corporation, to the de-
4 gree possible and consistent with its development ob-
5 jectives, shall give preference to a project in which
6 both the eligible investor has agreed to implement
7 the Extractive Industries Transparency Initiative
8 principles and criteria, or substantially similar prin-
9 ciples and criteria, and the host country where the
10 project is to be carried out has committed to the Ex-
11 tractive Industries Transparency Initiative principles
12 and criteria, or substantially similar principles and
13 criteria.

14 “(4) DEFINITIONS.—In this subsection:

15 “(A) EXTRACTIVE INDUSTRY.—The term
16 ‘extractive industry’ refers to an enterprise en-
17 gaged in the exploration, development, or ex-
18 traction of oil and gas reserves, metal ores,
19 gemstones, industrial minerals, or coal.

20 “(B) EXTRACTIVE INDUSTRIES TRANS-
21 PARENCY INITIATIVE PRINCIPLES AND CRI-
22 TERIA.—The term ‘Extractive Industries Trans-
23 parency Initiative principles and criteria’ means
24 the principles and criteria of the Extractive In-
25 dustries Transparency Initiative, as set forth in

1 Annex A to the Anti-Corruption Policies and
2 Strategies Handbook of the Corporation, as
3 published in September 2006.

4 “(5) REPORTING REQUIREMENT.—The Cor-
5 poration shall include in its annual report required
6 under section 240A a description of its activities to
7 carry out this subsection.

8 “(e) DEFINITIONS.—In this section:

9 “(1) CLEAN AND EFFICIENT ENERGY TECH-
10 NOLOGY.—The term ‘clean and efficient energy tech-
11 nology’ means an energy supply or end-use tech-
12 nology—

13 “(A) such as—

14 “(i) solar technology;

15 “(ii) wind technology;

16 “(iii) geothermal technology;

17 “(iv) hydroelectric technology; and

18 “(v) carbon capture technology; and

19 “(B) that, over its life cycle and compared
20 to a similar technology already in commercial
21 use—

“(i) is reliable, affordable, economically viable, socially acceptable, and compatible with the needs and norms of the country involved;

1 “(ii) results in—
2 “(I) reduced emissions of green-
3 house gases; or
4 “(II) increased geological seque-
5 stration; and
6 “(iii) may—
7 “(I) substantially lower emissions
8 of air pollutants; or
9 “(II) generate substantially
10 smaller and less hazardous quantities
11 of solid or liquid waste.

12 “(2) GREENHOUSE GAS.—The term ‘greenhouse
13 gas’ means—

14 “(A) carbon dioxide;
15 “(B) methane;
16 “(C) nitrous oxide;
17 “(D) hydrofluorocarbons;
18 “(E) perfluorocarbons; or
19 “(F) sulfur hexafluoride.”.

20 **SEC. 9. PROHIBITION ON ASSISTANCE TO DEVELOP OR**
21 **PROMOTE CERTAIN RAILWAY CONNECTIONS**
22 **AND RAILWAY-RELATED CONNECTIONS.**

23 Section 237 of the of the Foreign Assistance Act of
24 1961 (22 U.S.C. 2197) is further amended by adding at
25 the end the following:

1 “(q) PROHIBITION ON ASSISTANCE FOR CERTAIN
2 RAILWAY PROJECTS.—The Corporation may not provide
3 insurance, reinsurance, a guaranty, financing, or other as-
4 sistance to support the development or promotion of any
5 railway connection or railway-related connection that does
6 not traverse or connect with Armenia and does connect
7 Azerbaijan and Turkey.”.

8 **SEC. 10. INELIGIBILITY OF PERSONS DOING CERTAIN BUSI-
9 NESS WITH STATE SPONSORS OF TERRORISM.**

10 (a) IN GENERAL.—Section 237 of the Foreign Assist-
11 ance Act of 1961 (22 U.S.C. 2197) is further amended
12 by adding at the end the following:

13 “(r) INELIGIBLE PROJECTS.—

14 “(i) IN GENERAL.—A project will not be eligi-
15 ble to receive support provided by the Corporation
16 under this title if either of the following applies:

17 “(A)(i) An applicant for insurance, rein-
18 surance, financing, or other support for a
19 project provided to the government of a state
20 sponsor of terrorism a loan, or an extension of
21 credit, that remains outstanding.

22 “(ii) For purposes of this subparagraph,
23 the sale of goods, other than food or medicine,
24 on any terms other than a cash basis shall be
25 considered to be an extension of credit.

1 “(B) An applicant for insurance, reinsurance,
2 financing, or other support for a project
3 has an investment commitment valued at
4 \$20,000,000 or more for the energy sector in a
5 country that is a state sponsor of terrorism.

6 “(2) DEFINITIONS.—In this subsection:

7 “(A) CASH BASIS.—The term ‘cash basis’
8 refers to a sale in which the purchaser of goods
9 or services is required to make payment in full
10 within 45 days after receiving the goods or
11 services.

12 “(B) ENERGY SECTOR.—The term ‘energy
13 sector’ refers to activities to develop or trans-
14 port petroleum or natural gas resources.

15 “(C) INVESTMENT COMMITMENT.—The
16 term ‘investment commitment’ means any of
17 the following activities if such activity is under-
18 taken pursuant to a commitment, or pursuant
19 to the exercise of rights under a commitment,
20 that was entered into with the government of a
21 state sponsor of terrorism or a nongovern-
22 mental entity in a country that is a state spon-
23 sor of terrorism:

24 “(i) The entry into a contract that in-
25 cludes responsibility for the development of

1 petroleum resources located in a country
2 that is a state sponsor of terrorism, or the
3 entry into a contract providing for the gen-
4 eral supervision and guarantee of another
5 person's performance of such a contract.

6 "“(ii) The purchase of a share of own-
7 ership, including an equity interest, in that
8 development.

9 "“(iii) The entry into a contract pro-
10 viding for the participation in royalties,
11 earnings, or profits in that development,
12 without regard to the form of the partici-
13 pation.

14 "“(D) STATE SPONSOR OF TERRORISM.—
15 The term 'state sponsor of terrorism' means a
16 country the government of which the Secretary
17 of State has determined, for purposes of section
18 6(j) of the Export Administration Act of 1979,
19 section 620A of the Foreign Assistance Act of
20 1961, section 40 of the Arms Export Control
21 Act, or any other provision of law, to be a gov-
22 ernment that has repeatedly provided support
23 for acts of international terrorism.

24 "“(3) CERTIFICATION.—

1 “(A) BY APPLICANTS.—A person or entity
2 applying for insurance, reinsurance, a guaranty,
3 financing, or other assistance under this title
4 may not receive such support unless its chief
5 executive officer certifies to the Corporation,
6 under penalty of perjury, that the person or entity
7 and its majority-owned subsidiaries are not
8 engaged in any activity described in subparagraph
9 (A) or (B) of paragraph (1).

10 “(B) BY ULTIMATE PARENT ENTITIES.—
11 In the case of an applicant that is a majority-
12 owned entity of another entity, in addition to
13 the certification under subparagraph (A), the
14 chief executive officer of the ultimate parent en-
15 tity of the applicant must certify, under penalty
16 of perjury, that it and its majority-owned sub-
17 sidiaries are not engaged in any activity de-
18 scribed in subparagraph (A) or (B) of para-
19 graph (1).

20 “(C) APPLICATION TO STRAW MAN TRANS-
21 ACTIONS.—In any case in which—

22 “(i) an applicant for insurance, rein-
23 surance, financing, or other assistance
24 under this title is providing goods and
25 services to a project,

1 “(ii) more than 50 percent of such
2 goods and services are acquired from an
3 unaffiliated entity, and

4 “(iii) the unaffiliated entity is receiving
5 \$20,000,000 or more, or sums greater
6 than 50 percent of the amount of the as-
7 sistance provided by the Corporation for
8 the project (including contingent liability),
9 for such goods or services;

10 then the chief executive officer of the unaffili-
11 ated entity must make a certification under
12 subparagraph (A), and any ultimate parent en-
13 tity must make a certification required by sub-
14 paragraph (B).

15 “(D) DILIGENT INQUIRY.—A certification
16 required by subparagraph (A), (B), or (C) may
17 be made to the best knowledge and belief of the
18 certifying officer if that officer states that he or
19 she has made diligent inquiry into the matter
20 certified.

21 “(E) EXCEPTION.—(i) A chief executive
22 officer of an applicant or other entity may pro-
23 vide a certification required by subparagraph
24 (A), (B), or (C) with respect to the activity of
25 a majority-owned subsidiary or entity notwith-

1 standing activity by such majority-owned sub-
2 sidiary or entity that would cause a project to
3 be ineligible for support under subparagraph
4 (A) or (B) of paragraph (1) if such activity is
5 carried out under a contract or other obligation
6 of such majority-owned subsidiary or entity that
7 was entered into or incurred before the acquisi-
8 tion of such majority-owned subsidiary or entity
9 by the applicant or ultimate parent entity.

10 “(ii) Clause (i) shall not apply if the terms
11 of such contract or other obligation are ex-
12 panded or extended after such acquisition.

13 “(F) **DEFINITION.**—For purposes of this
14 paragraph, a person is an ultimate parent of an
15 entity if the person owns directly, or through
16 majority ownership of other entities, greater
17 than 50 percent of the equity of the entity.

18 “(4) **EXCEPTION.**—The prohibition in para-
19 graph (1) shall not—

20 “(A) apply to a loan, extension of credit,
21 or investment commitment by an applicant, or
22 other entity covered by a certification under
23 subparagraph (A), (B), or (C) of paragraph (3),
24 in Southern Sudan, Southern Kordofan/Nuba
25 Mountains State, Blue Nile State, or Abyei;

10 “(B) prohibit the Corporation from pro-
11 viding support for projects in Southern Sudan,
12 Southern Kordofan/Nuba Mountains State,
13 Blue Nile State, and Abyei, Darfur, if the Cor-
14 poration, with the concurrence of the Secretary
15 of State, determines that such projects will pro-
16 vide emergency relief, promote economic self-
17 sufficiency, or implement a nonmilitary pro-
18 gram in support of a viable peace agreement in
19 Sudan, including the Comprehensive Peace
20 Agreement for Sudan and the Darfur Peace
21 Agreement.

22 “(5) PROSPECTIVE APPLICATION OF SUB-
23 SECTION.—This subsection shall not be applied to
24 limit support by the Corporation under this title be-
25 cause an applicant, or other entity covered by a cer-

1 tification under subparagraph (A), (B), or (C) of
2 paragraph (3) engaged in commercial activity spe-
3 cifically licensed by the Office of Foreign Assets
4 Control of the Department of the Treasury.”.

5 (b) TERMINATION.—

6 (1) IN GENERAL.—The amendment made by
7 this section shall cease to be effective with respect
8 to a country that is a state sponsor of terrorism 30
9 days after the President certifies to the appropriate
10 congressional committees that—

11 (A) the country has ceased providing sup-
12 port for acts of international terrorism and no
13 longer satisfies the requirements for designation
14 as a state sponsor of terrorism;

15 (B) the country does not possess nuclear
16 weapons or a significant program to develop nu-
17 clear weapons; and

18 (C) the country is not committing genocide
19 or conducting a program of ethnic cleansing
20 against a civilian population that approaches
21 genocide.

22 (2) DEFINITIONS.—In this subsection:

23 (A) APPROPRIATE CONGRESSIONAL COM-
24 MITTEES.—The term “appropriate congressional
25 committees” means the Committee on

1 Foreign Affairs of the House of Representatives
2 and the Committee on Foreign Relations of the
3 Senate.

10 SEC. 11. INCREASED TRANSPARENCY.

11 (a) IN GENERAL.—Section 237 of the Foreign Assist-
12 ance Act of 1961 (22 U.S.C. 2197) is further amended
13 by adding at the end the following new subsections:

14 “(s) AVAILABILITY OF PROJECT INFORMATION.—Be-
15 ginning 90 days after the date of the enactment of the
16 Overseas Private Investment Corporation Reauthorization
17 Act of 2007, the Corporation shall make public, and post
18 on its Internet website, summaries of all new projects sup-
19 ported by the Corporation, and other relevant information,
20 except that the Corporation shall not include any confiden-
21 tial business information in the summaries and informa-
22 tion made available under this subsection.

23 “(t) REVIEW OF METHODOLOGY.—Not later than
24 180 days after the date of the enactment of the Overseas
25 Private Investment Corporation Reauthorization Act of

1 2007, the Corporation shall publish in the Federal Reg-
2 ister and periodically revise, subject to a period of public
3 comment, the detailed methodology, including relevant
4 regulations, used to assess and monitor the impact of
5 projects supported by the Corporation on the development
6 and environment of, and international worker rights in,
7 host countries, and on United States employment.

8 “(u) PUBLIC NOTICE PRIOR TO PROJECT AP-
9 PROVAL.—

10 “(1) PUBLIC NOTICE.—The Board of Directors
11 of the Corporation may not vote in favor of any ac-
12 tion proposed to be taken by the Corporation on any
13 Category A project until at least 60 days after the
14 Corporation—

15 “(A) makes available for public comment a
16 summary of the project and relevant informa-
17 tion about the project; and

18 “(B) makes the summary and information
19 described in paragraph (1) available to locally
20 affected groups in the area of impact of the
21 proposed project, and to host country non-
22 governmental organizations.

23 The Corporation shall not include any business con-
24 fidential information in the summary and informa-

1 tion made available under subparagraphs (A) and
2 (B).

3 “(2) PUBLISHED RESPONSE.—To the extent
4 practicable, the Corporation shall publish responses
5 to the comments received under paragraph (1) with
6 respect to a Category A project and submit the re-
7 sponses to the Board not later than 7 days before
8 a vote is to be taken on any action proposed by the
9 Corporation on the project.

10 “(3) DEFINITIONS.—In this subsection, the
11 term ‘Category A project’ means any project or
12 other activity for which the Corporation proposes to
13 provide insurance, reinsurance, financing, or other
14 support under this title and which is likely to have
15 significant adverse environmental impacts.”.

16 (b) OFFICE OF ACCOUNTABILITY.—Section 237 of
17 the Foreign Assistance Act of 1961 (22 U.S.C. 2197) is
18 further amended by adding at the end the following new
19 subsection:

20 “(v) OFFICE OF ACCOUNTABILITY.—The Corpora-
21 tion shall maintain an Office of Accountability to provide
22 problem-solving services for projects supported by the Cor-
23 poration and to review the Corporation’s compliance with
24 its environmental, social, worker rights, human rights, and
25 transparency policies and procedures, to the maximum ex-

1 tent practicable. The Office of Accountability shall operate
2 in a manner that is fair, objective and transparent.”.

3 **SEC. 12. FRAUD AND OTHER BREACHES OF CONTRACT.**

4 Section 237(n) of the Foreign Assistance Act of 1961
5 (22 U.S.C. 2197(n)) is amended—

6 (1) by striking “Whoever” and inserting:

7 “(1) IN GENERAL.—Whoever”, and

8 (2) by adding at the end the following:

9 “(2) DEFERRALS TO DEPARTMENT OF JUSTICE.—(A) The President of the Corporation shall
10 refer to the Department of Justice for appropriate
11 action information known to the Corporation con-
12 cerning any substantial evidence of—

13 “(i) a violation of this title;

14 “(ii) a material breach of contract entered
15 into with the Corporation by an eligible inves-
16 tor; or

17 “(iii) a material false representation made
18 by an investor to the Corporation.

19 “(B) Subparagraph (A) does not apply if the
20 President of the Corporation concludes that the mat-
21 ter described in clause (i), (ii), or (iii), as the case
22 may be, of subparagraph (A)—

23 “(i) is not evidence of a possible violation
24 of criminal law; and

1 “(ii) is not evidence that the Federal Gov-
2 ernment is entitled to civil remedy or to impose
3 a civil penalty.”.

4 **SEC. 13. TRANSPARENCY AND ACCOUNTABILITY OF IN-**
5 **VESTMENT FUNDS.**

6 (a) **IN GENERAL.**—Section 239 of the Foreign Assist-
7 ance Act of 1961 (22 U.S.C. 2199) is amended by adding
8 at the end the following:

9 “(1) **TRANSPARENCY AND ACCOUNTABILITY OF IN-**
10 **VESTMENT FUNDS.**—

11 “(1) **COMPETITIVE SELECTION OF INVESTMENT**
12 **FUND MANAGEMENT.**—With respect to any invest-
13 ment fund that the Corporation creates on or after
14 the date of the enactment of the Overseas Private
15 Investment Corporation Reauthorization Act of
16 2007, the Corporation may select persons to manage
17 the fund only by contract using full and open com-
18 petitive procedures.

19 “(2) **CRITERIA FOR SELECTION.**—In assessing
20 proposals for investment fund management pro-
21 posals, the Corporation shall consider, in addition to
22 other factors, the following:

23 “(A) The prospective fund management’s
24 experience, depth, and cohesiveness.

1 “(B) The prospective fund management’s
2 track record in investing risk capital in emerg-
3 ing markets.

4 “(C) The prospective fund management’s
5 experience, management record, and monitoring
6 capabilities in its target countries, including de-
7 tails of local presence (directly or through local
8 alliances).

9 “(D) The prospective fund management’s
10 experience as a fiduciary in managing institu-
11 tional capital, meeting reporting requirements,
12 and administration.

13 “(E) The prospective fund management’s
14 record in avoiding investments in companies
15 that would be disqualified under section 237(r).

16 “(3) ANNUAL REPORT.—The Corporation shall
17 include in each annual report under section 240A an
18 analysis of the investment fund portfolio of the Cor-
19 poration, including the following:

20 “(A) FUND PERFORMANCE.—An analysis
21 of the aggregate financial performance of the
22 investment fund portfolio grouped by region
23 and maturity.

24 “(B) STATUS OF LOAN GUARANTIES.—The
25 amount of guarantees committed by the Cor-

1 poration to support investment funds, including
2 the percentage of such amount that has been
3 disbursed to the investment funds.

4 “(C) RISK RATINGS.—The definition of
5 risk ratings, and the current aggregate risk rat-
6 ings for the investment fund portfolio, including
7 the number of investment funds in each of the
8 Corporation’s rating categories.

9 “(D) COMPETITIVE SELECTION OF INVEST-
10 MENT FUND MANAGEMENT.—The number of
11 proposals received and evaluated for each newly
12 established investment fund.”.

13 (b) GAO AUDIT.—Not later than 1 year after the
14 submission of the first report to Congress under section
15 240A of the Foreign Assistance Act of 1961 that includes
16 the information required by section 239(l)(3) of that Act
17 (as added by subsection (a) of this section), the Com-
18 troller General of the United States shall prepare and sub-
19 mit to the Committee on Foreign Affairs of the House
20 of Representatives and the Committee on Foreign Rela-
21 tions of the Senate an independent assessment of the in-
22 vestment fund portfolio of the Overseas Private Invest-
23 ment Corporation, covering the items required to be ad-
24 dressed under such section 239(l)(3).

1 **SEC. 14. EXTENSION OF AUTHORITY TO OPERATE IN IRAQ.**

2 Section 239 of the Foreign Assistance Act of 1961
3 (22 U.S.C. 2199) is amended by adding at the end the
4 following:

5 “(m) OPERATIONS IN IRAQ.—Notwithstanding sub-
6 sections (a) and (b) of section 237, the Corporation is au-
7 thorized to undertake in Iraq any program authorized by
8 this title.”.

9 **SEC. 15. CONSISTENCY WITH EXISTING LAW.**

10 Section 239 of the Foreign Assistance Act of 1961
11 (22 U.S.C. 2199) is further amended by adding at the
12 end the following:

13 “(n) CONSISTENCY WITH OTHER LAW.—Section
14 620L of this Act shall apply to any insurance, reinsurance,
15 guaranty, or other financing issued by the Corporation for
16 projects in the West Bank and Gaza to the same extent
17 as such section applies to other assistance under this Act.

18 “(o) LIMITATION ON ASSISTANCE TO GAZA AND THE
19 WEST BANK.—The Corporation may not provide insur-
20 ance, reinsurance, a guaranty, financing, or other assist-
21 ance to support a project in any part of Gaza or the West
22 Bank unless the Secretary of State determines that the
23 location for the project is not under the effective control
24 of Hamas or any other foreign terrorist organization des-
25 ignated under section 219 of the Immigration and Nation-
26 ality Act (8 U.S.C. 1189).”.

1 **SEC. 16. CONGRESSIONAL NOTIFICATION REGARDING MAX-**2 **IMUM CONTINGENT LIABILITY.**

3 Section 239 of the Foreign Assistance Act of 1961
4 (22 U.S.C. 2199) is further amended by adding at the
5 end the following:

6 “(p) **CONGRESSIONAL NOTIFICATION OF INCREASE**
7 **IN MAXIMUM CONTINGENT LIABILITY.**—The Corporation
8 shall notify the Committee on Foreign Affairs of the
9 House of Representatives and the Committee on Foreign
10 Relations of the Senate not later than 15 days after the
11 date on which the Corporation’s maximum contingent li-
12 ability outstanding at any one time pursuant to insurance
13 issued under section 234(a), and the amount of financing
14 issued under sections 234(b) and (e), exceeds the previous
15 fiscal year’s maximum contingent liability by 25 percent.”.

16 **SEC. 17. ASSISTANCE FOR SMALL BUSINESSES AND ENTI-**17 **TIES.**

18 Section 240 of the Foreign Assistance Act of 1961
19 (22 U.S.C. 2200) is amended by adding at the end the
20 following:

21 “(e) **RESOURCES DEDICATED TO SMALL BUSI-**
22 **NESSES, COOPERATIVES, AND OTHER SMALL UNITED**
23 **STATES INVESTORS.**—The Corporation shall ensure that
24 adequate personnel and resources, including senior offi-
25 cers, are dedicated to assist United States small busi-
26 nesses, cooperatives, and other small United States inves-

1 tors in obtaining insurance, reinsurance, financing, and
2 other support under this title. The Corporation shall in-
3 clude, in each annual report under section 240A, the fol-
4 lowing information with respect to the period covered by
5 the report:

6 “(1) A description of such personnel and re-
7 sources.

8 “(2) The number of small businesses, coopera-
9 tives, and other small United States investors that
10 received such insurance, reinsurance, financing, and
11 other support, and the dollar value of such insur-
12 ance, reinsurance, financing and other support.

13 “(3) A description of the projects for which
14 such insurance, reinsurance, financing, and other
15 support was provided.”.

16 **SEC. 18. TECHNICAL CORRECTIONS.**

17 (a) **PILOT EQUITY FINANCE PROGRAM.**—Section 234
18 of the Foreign Assistance Act of 1961 (22 U.S.C. 2194)
19 is amended—

20 (1) by striking subsection (g); and

21 (2) by redesignating subsection (h) as sub-
22 section (g).

23 (b) **TRANSFER AUTHORITY.**—Section 235 of the For-
24 eign Assistance Act of 1961 (22 U.S.C. 2195) is amend-
25 ed—

1 (1) by striking subsection (e); and
2 (2) by redesignating subsection (f) as sub-
3 section (e).

4 (e) GUARANTY CONTRACT.—Section 237(j) of the
5 Foreign Assistance Act of 1961 (22 U.S.C. 2197(j)) is
6 amended by inserting “insurance, reinsurance, and” after
7 “Each”.

8 (d) TRANSFER OF PREDECESSOR PROGRAMS AND
9 AUTHORITIES.—

14 (A) by striking subsection (b); and
15 (B) by redesignating the subsections (e)
16 through (p) as subsections (b) through (o), re-
17 spectively.

22 (B) Section 240A(a) of the Foreign Assistance
23 Act of 1961 (22 U.S.C. 2200A(a)) is amended—

24 (i) in paragraph (1), by striking “239(h)”
25 and inserting “239(e)”, and

1 (ii) in paragraph (2)(A), by striking
2 “239(i)” and inserting “239(h)”.

10 (e) ADDITIONAL CLERICAL AMENDMENTS.—Section
11 234(b) of the Foreign Assistance Act of 1961 (22 U.S.C.
12 2194(b)) is amended by striking “235(a)(2)” and insert-
13 ing “235(a)(1)”.

14 SEC. 19. EFFECTIVE DATE.

15 (a) NEW APPLICATIONS.—This Act and the amend-
16 ments made by this Act shall apply with respect to any
17 application for insurance, reinsurance, a guaranty, finance-
18 ing, or other support under title IV of chapter 2 of part
19 I of the Foreign Assistance Act of 1961 if the application
20 is received by the Overseas Private Investment Corpora-
21 tion on or after July 1, 2007, and the application is ap-
22 proved by the Corporation on or after the date of the en-
23 actment of this Act.

24 (b) EXTENSIONS AND RENEWALS.

16 SECTION 1. SHORT TITLE.

17 *This Act may be cited as the “Overseas Private Invest-
18 ment Corporation Reauthorization Act of 2008”.*

19 SEC. 2. REAUTHORIZATION OF OPIC PROGRAMS.

20 *Section 235(a)(2) of the Foreign Assistance Act of 1961*
21 (22 U.S.C. 2195(a)(2)) is amended by striking “September
22 30, 2007” and inserting “September 30, 2011”.

1 **SEC. 3. REQUIREMENTS REGARDING INTERNATIONALLY**2 **RECOGNIZED WORKER RIGHTS.**

3 Subsection (a) of section 231A of the Foreign Assistance
4 Act of 1961 (22 U.S.C. 2191a(a)) is amended to read
5 as follows:

6 “(a) **INTERNATIONALLY RECOGNIZED WORKER**
7 **RIGHTS.**—

8 “(1) **IN GENERAL.**—The Corporation may insure, reinsure, guaranty, or finance a project only if—

11 “(A) the country in which the project is to be undertaken is eligible for designation as a beneficiary developing country under the Generalized System of Preferences (19 U.S.C. 2461 et seq.) and has not been determined to be ineligible for such designation on the basis of section 502(b)(2)(G) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)(G)) (relating to internationally recognized worker rights), or section 502(b)(2)(H) of such Act (19 U.S.C. 2462(b)(2)(H)) (relating to the worst forms of child labor); or

22 “(B) the country in which the project is to be undertaken is not eligible for designation as a beneficiary country under the Generalized System of Preferences, the government of that country has taken or is taking steps to afford workers

1 *in the country (including any designated zone or*
2 *special administrative region or area in that*
3 *country) internationally recognized worker rights*
4 *(as defined in section 507(4) of the Trade Act of*
5 *1974) (19 U.S.C. 2467(4)).*

6 “*(2) LIMITATION INAPPLICABLE.—The limitation*
7 *contained in paragraph (1) shall not apply to pro-*
8 *viding assistance for humanitarian services.*

9 “*(3) USE OF REPORTS.—The Corporation shall,*
10 *in implementing paragraph (1), consider—*

11 “*(A) information contained in the reports*
12 *required by sections 116(d) and 502B(b) of this*
13 *Act and the report required by section 504 of the*
14 *Trade Act of 1974 (19 U.S.C. 2464);*

15 “*(B) other relevant sources of information*
16 *readily available to the Corporation, including*
17 *observations, reports, and recommendations of*
18 *the International Labour Organization; and*

19 “*(C) information provided in the hearing*
20 *required under subsection (c).*

21 “*(4) CONTRACT LANGUAGE.—The Corporation*
22 *shall include the following language, in substantially*
23 *the following form, in all contracts which the Cor-*
24 *poration enters into with eligible investors to provide*
25 *support under this title:*

1 *The investor agrees not to take any actions to*
2 *obstruct or prevent employees of the foreign enterprise*
3 *from exercising the employees' internationally recog-*
4 *nized worker rights (as defined in section 507(4) of*
5 *the Trade Act of 1974) (19 U.S.C. 2467(4)) and the*
6 *investor agrees to adhere to the obligations regarding*
7 *those rights. The investor agrees to prohibit discrimi-*
8 *nation with respect to employment and occupation.'*

9 “(5) PREFERENCE TO CERTAIN COUNTRIES.—

10 *Consistent with its development objectives, the Cor-*

11 *poration shall give preferential consideration to*

12 *projects in countries that—*

13 “(A) have adopted and maintained, in the
14 country’s laws and regulations, internationally
15 recognized worker rights, as well as the elimi-
16 nation of discrimination with respect to employ-
17 ment and occupation; and

19 SEC. 4. PREFERENTIAL CONSIDERATION OF CERTAIN IN-
20 VESTMENT PROJECTS.

21 *Section 231(f) of the Foreign Assistance Act of 1961*
22 (22 U.S.C. 2191(f)) is amended to read as follows:

23 “(f) to the greatest degree practicable and consistent
24 with the goals of the Corporation, to give preferential con-
25 sideration to investment projects in any less developed coun-

1 *try the government of which is receptive to both domestic*
2 *and foreign private enterprise and to projects in any coun-*
3 *try the government of which is willing and able to maintain*
4 *conditions that enable private enterprise to make a full con-*
5 *tribution to the development process;”.*

6 **SEC. 5. CLIMATE CHANGE MITIGATION ACTION PLAN.**

7 *Title IV of chapter 2 of part I of the Foreign Assistance*
8 *Act of 1961 (22 U.S.C. 2191 et seq.) is amended by insert-*
9 *ing after section 234A the following new section:*

10 **“SEC. 234B. CLIMATE CHANGE MITIGATION.**

11 *“(a) MITIGATION ACTION PLAN.—The Corporation*
12 *shall, not later than 180 days after the date of the enact-*
13 *ment of the Overseas Private Investment Corporation Reau-*
14 *thorization Act of 2008, institute a climate change mitiga-*
15 *tion action plan that includes the following:*

16 *“(1) CLEAN TECHNOLOGY.—*

17 *“(A) INCREASING ASSISTANCE.—The Cor-*
18 *poration shall establish a goal of substantially*
19 *increasing its support of projects that use, de-*
20 *velop, or otherwise promote the use of clean en-*
21 *ergy technologies during the 10-year period be-*
22 *ginning on the date of the enactment of the Over-*
23 *seas Private Investment Corporation Reauthor-*
24 *ization Act of 2008.*

1 “(B) PREFERENTIAL TREATMENT TO
2 PROJECTS.—*The Corporation shall give prefer-
3 erential treatment to evaluating and awarding
4 assistance for, and provide greater flexibility in
5 supporting, projects that use, develop, or other-
6 wise promote the use of clean energy technologies.*

7 “(C) REPORT ON PLAN.—*The Corporation
8 shall, not later than 180 days after the date of
9 the enactment of the Overseas Private Investment
10 Corporation Reauthorization Act of 2008, submit
11 to the Committees on Foreign Relations and Ap-
12 propriations of the Senate and the Committees
13 on Foreign Affairs and Appropriations of the
14 House of Representatives a report on the plan
15 developed to carry out subparagraph (A). There-
16 after, the Corporation shall include in its annual
17 report required under section 240A a discussion
18 of the plan and its implementation.*

19 “(2) ENVIRONMENTAL IMPACT ASSESSMENTS.—

20 “(A) GREENHOUSE GAS EMISSIONS.—*The
21 Corporation shall, in making an environmental
22 impact assessment or initial environmental
23 audit for a project under section 231A(b), also
24 take into account the degree to which the project
25 contributes to the emission of greenhouse gases.*

1 “(B) OTHER DUTIES NOT AFFECTED.—The
2 requirement provided for under subparagraph
3 (A) is in addition to any other requirement, ob-
4 ligation, or duty of the Corporation.

5 “(3) GOALS FOR REDUCING GREENHOUSE GAS
6 EMISSIONS.—

7 “(A) IN GENERAL.—The Corporation shall
8 continue to maintain—

9 “(i) a goal for reducing direct green-
10 house gas emissions associated with projects
11 in the Corporation’s portfolio on the date of
12 the enactment of the Overseas Private In-
13 vestment Corporation Reauthorization Act
14 of 2008 by 20 percent during the 10-year
15 period beginning on such date of enactment;
16 and

17 “(ii) a goal for limiting annual invest-
18 ments in projects that have significant
19 greenhouse gas emissions after such date of
20 enactment in a manner that reduces green-
21 house gas emissions associated with projects
22 in the Corporation’s total portfolio by 20
23 percent during the 10-year period beginning
24 on such date of enactment.

25 “(B) SPECIAL RULES.—

1 “(i) *BASELINE*.—For purposes of deter-
2 mining the percentage by which greenhouse
3 gas emissions are reduced under subpara-
4 graph (A), the Corporation shall use the ag-
5 gregate estimated greenhouse gas emissions
6 for projects in the Corporation’s portfolio.

7 “(ii) *SIGNIFICANT GREENHOUSE GAS*
8 *EMISSIONS PROJECTS*.—For purposes of this
9 paragraph, projects that have significant
10 greenhouse gas emissions are projects that
11 result in the emission of more than 100,000
12 tons of CO₂ equivalent each year.

13 “(C) *REPORTING REQUIREMENTS*.—The
14 Corporation shall include, in each annual report
15 required under section 240A, the following infor-
16 mation with respect to the period covered by the
17 report:

18 “(i) The annual greenhouse gas emis-
19 sions attributable to each project in the Cor-
20 poration’s active portfolio that has signifi-
21 cant greenhouse gas emissions.

22 “(ii) The estimated greenhouse gas
23 emissions for each new project that has sig-
24 nificant greenhouse gas emissions for which
25 the Corporation provided insurance, rein-

13 "(b) EXTRACTION INVESTMENTS.—

14 “(1) PRIOR NOTIFICATION TO CONGRESSIONAL
15 COMMITTEES.—

16 “(A) *IN GENERAL.*—The Corporation shall
17 provide notice of consideration of approval of a
18 project described in subparagraph (B) to the
19 Committees on Foreign Relations and Approp-
20 priations of the Senate and the Committees on
21 Foreign Affairs and Appropriations of the House
22 of Representatives not later than 60 days before
23 approval of such project.

24 “(B) PROJECT DESCRIBED.—A project de-
25 scribed in this subparagraph is a Category A

1 *project (as defined in section 237(q)(3)) relating*
2 *to an extractive industry project or any extractive*
3 *industry project for which the assistance to be provided by the Corporation is valued at*
4 *\$10,000,000 or more (including contingent liability).*

7 “*(2) COMMITMENT TO EITI PRINCIPLES.—*

8 “*(A) IN GENERAL.—Except as provided in subparagraph (B), the Corporation may approve a contract of insurance, reinsurance, a guaranty, or enter into an agreement to provide financing to an eligible investor for a project that significantly involves an extractive industry only if—*

14 “*(i) the eligible investor has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria related to the specific project to be carried out; and*

20 “*(ii)(I) the host country where the project is to be carried out has committed to the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria; or*

1 “(II) the host country where the project
2 is to be carried out has in place or is taking
3 the necessary steps to establish functioning
4 systems for—

5 “(aa) accurately accounting for
6 revenues and expenditures in connec-
7 tion with the extraction and export of
8 the type of natural resource to be ex-
9 tracted or exported;

10 “(bb) the independent audit of
11 such revenues and expenditures and the
12 widespread public dissemination of the
13 finding of the audit; and

14 “(cc) verifying government re-
15 ceipts against company payments, in-
16 cluding widespread dissemination of
17 such payment information, and disclo-
18 sure of such documents as host govern-
19 ment agreements, concession agree-
20 ments, and bidding documents, and al-
21 lowing in any such dissemination or
22 disclosure for the redaction of, or ex-
23 ceptions for, information that is com-
24 mercially proprietary or that would
25 create a competitive disadvantage.

1 “(B) *EXCEPTION.*—If a host country does
2 not meet the requirements of subparagraph
3 (A)(ii) (I) or (II), the Corporation may approve
4 a contract of insurance, reinsurance, or a guar-
5 anty, or enter into an agreement to provide fi-
6 nancing for a project in the host country if the
7 Corporation determines it is in the foreign pol-
8 icy interest of the United States for the Corpora-
9 tion to provide support for the project in the host
10 country and the host country does not prevent an
11 eligible investor from complying with subpara-
12 graph (A)(i).

13 “(3) *PREFERENCE FOR CERTAIN PROJECTS.*—
14 With respect to all projects that significantly involve
15 an extractive industry, the Corporation, to the extent
16 practicable and consistent with the Corporation’s de-
17 velopment objectives, shall give preference to a project
18 in which the eligible investor has agreed to implement
19 the Extractive Industries Transparency Initiative
20 principles and criteria, or substantially similar prin-
21 ciples and criteria, and the host country where the
22 project is to be carried out has committed to the Ex-
23 tractive Industries Transparency Initiative principles
24 and criteria, or substantially similar principles and
25 criteria.

1 “(4) *EFFECT ON OTHER REQUIREMENTS*.—Nothing
2 *in this subsection shall affect the limitations and*
3 *prohibitions with respect to direct investments de-*
4 *scribed in section 234(c)*.

5 “(5) *REPORTING REQUIREMENT*.—*The Corpora-*
6 *tion shall include in its annual report required under*
7 *section 240A a description of its activities to carry*
8 *out this subsection*.

9 “(c) *DEFINITIONS*.—*In this section*:

10 “(1) *CLEAN ENERGY TECHNOLOGY*.—*The term*
11 *‘clean energy technology’ means an energy supply or*
12 *end-use technology that, compared to a similar tech-*
13 *nology already in widespread commercial use in a*
14 *host country, will—*

15 “(A) *reduce emissions of greenhouse gases*;
16 *or*

17 “(B) *decrease the intensity of energy usage*.

18 “(2) *GREENHOUSE GAS*.—*The term ‘greenhouse*
19 *gas’ means—*

20 “(A) *carbon dioxide*;

21 “(B) *methane*;

22 “(C) *nitrous oxide*;

23 “(D) *hydrofluorocarbons*;

24 “(E) *perfluorocarbons*; or

25 “(F) *sulfur hexafluoride*.

1 “(3) *EXTRACTIVE INDUSTRY*.—The term ‘extractive industry’ refers to an enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals (except rock used for construction purposes), or coal.”.

6 **SEC. 6. INCREASED TRANSPARENCY.**

7 (a) *IN GENERAL*.—Section 231A(c)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191a) is amended by replacing (c)(2) with the following paragraph:

10 “(2) *In conjunction with each meeting of its Board of Directors, the Corporation shall hold a public hearing in order to afford an opportunity for any person to present views regarding the activities of the Corporation. The Corporation shall notice such a hearing at least 20 days in advance. At least 15 days in advance of such hearing the Corporation shall make available a public summary of each project, including information related to workers rights, to be considered at the meeting. The Corporation shall not include any confidential business information in the summary made available under this subsection. Such views shall be made part of the record.*”.

22 (b) *ADDITIONAL TRANSPARENCY*.—Section 237 of the Foreign Assistance Act of 1961 (22 U.S.C. 2197) is amended by adding at the end the following new subsections:

1 “(p) *REVIEW OF METHODOLOGY*.—Not later than 180
2 days after the date of the enactment of the *Overseas Private*
3 *Investment Corporation Reauthorization Act of 2008*, the
4 *Corporation shall make available to the public the method-*
5 *ology, including relevant regulations, used to assess and*
6 *monitor the impact of projects supported by the Corpora-*
7 *tion on employment in the United States and on the devel-*
8 *opment, the environment, and the protection of internation-*
9 *ally recognized worker rights, as well as the elimination of*
10 *discrimination with respect to employment and occupation,*
11 *in host countries.*

12 “(q) *PUBLIC NOTICE PRIOR TO PROJECT AP-*
13 *PROVAL*.—

14 “(1) *PUBLIC NOTICE*.—

15 “(A) *IN GENERAL*.—The *Board of Directors*
16 *of the Corporation may not vote in favor of any*
17 *action proposed to be taken by the Corporation*
18 *on a Category A project before the date that is*
19 *60 days after the Corporation*—

20 “(i) *makes available for public com-*
21 *ment a summary of the project and relevant*
22 *information about the project; and*

23 “(ii) *such summary and information*
24 *described in clause (i) has been made avail-*
25 *able to groups in the area that may be im-*

1 *pacted by the proposed project and to non-*
2 *governmental organizations in the host*
3 *country.*

4 “(B) *EXCEPTION.*—*The Corporation shall*
5 *not include any confidential business informa-*
6 *tion in the summary and information made*
7 *available under clauses (i) and (ii) of subpara-*
8 *graph (A).*

9 “(2) *PUBLISHED RESPONSE.*—*To the extent*
10 *practicable, the Corporation shall publish responses to*
11 *the comments received under paragraph (1)(A)(i)*
12 *with respect to a Category A project and submit the*
13 *responses to the Board not later than 7 days before*
14 *a vote is to be taken on any action proposed by the*
15 *Corporation on the project.*

16 “(3) *CATEGORY A PROJECT DEFINED.*—*The term*
17 *‘Category A project’ means any project or other activi-*
18 *ty for which the Corporation proposes to provide in-*
19 *surance, reinsurance, a guaranty, financing, or other*
20 *assistance under this title and which is likely to have*
21 *a significant adverse environmental impact.”.*

22 (c) *OFFICE OF ACCOUNTABILITY.*—*Section 237 of the*
23 *Foreign Assistance Act of 1961 (22 U.S.C. 2197), as amend-*
24 *ed by subsection (b) of this section, is amended by adding*
25 *at the end the following new subsection:*

1 “(r) *OFFICE OF ACCOUNTABILITY*.—The Corporation
2 shall maintain an *Office of Accountability* to provide, to
3 the maximum extent practicable, upon request, problem-
4 solving services for projects supported by the Corporation
5 and review of the Corporation’s compliance with its envi-
6 ronmental, social, internationally recognized worker rights,
7 human rights, and transparency policies and procedures.
8 The *Office of Accountability* shall operate in a manner that
9 is fair, objective, and transparent.”.

10 **SEC. 7. TRANSPARENCY AND ACCOUNTABILITY OF INVEST-
11 MENT FUNDS.**

12 (a) *IN GENERAL*.—Section 239 of the *Foreign Assist-
13 ance Act of 1961* (22 U.S.C. 2199) is amended by adding
14 at the end the following:

15 “(l) **TRANSPARENCY AND ACCOUNTABILITY OF INVEST-
16 MENT FUNDS**.—

17 “(1) **COMPETITIVE SELECTION OF INVESTMENT
18 FUND MANAGEMENT**.—With respect to any investment
19 fund that the Corporation creates on or after the date
20 of the enactment of the *Overseas Private Investment
21 Corporation Reauthorization Act of 2008*, the Cor-
22 poration may select persons to manage the fund only
23 by contract using competitive procedures that are full
24 and open.

1 “(2) CRITERIA FOR SELECTION.—In assessing
2 proposals for investment fund management proposals,
3 the Corporation shall consider, in addition to other
4 factors, the following:

5 “(A) The prospective fund management’s ex-
6 perience, depth, and cohesiveness.

7 “(B) The prospective fund management’s
8 track record in investing risk capital in emerg-
9 ing markets.

10 “(C) The prospective fund management’s ex-
11 perience, management record, and monitoring
12 capabilities in the countries in which the man-
13 agement operates, including details of local pres-
14 ence (directly or through local alliances).

15 “(D) The prospective fund management’s
16 experience as a fiduciary in managing institu-
17 tional capital, meeting reporting requirements,
18 and administration.

19 “(E) The prospective fund management’s
20 record in avoiding investments in companies
21 that would be disqualified under section 239(m).

22 “(3) ANNUAL REPORT.—The Corporation shall
23 include in each annual report under section 240A an
24 analysis of the investment fund portfolio of the Cor-
25 poration, including the following:

1 “(A) *FUND PERFORMANCE*.—An analysis of
2 the aggregate financial performance of the in-
3 vestment fund portfolio grouped by region and
4 maturity.

5 “(B) *STATUS OF LOAN GUARANTIES*.—The
6 amount of guarantees committed by the Corpora-
7 tion to support investment funds, including the
8 percentage of such amount that has been dis-
9 bursed to the investment funds.

10 “(C) *RISK RATINGS*.—The definition of risk
11 ratings, and the current aggregate risk ratings
12 for the investment fund portfolio, including the
13 number of investment funds in each of the Cor-
14 poration’s rating categories.

15 “(D) *COMPETITIVE SELECTION OF INVEST-
16 MENT FUND MANAGEMENT*.—The number of pro-
17 posals received and evaluated for each newly es-
18 tablished investment fund.”.

19 (b) *GAO REVIEW*.—Not later than 1 year after the
20 submission of the first report to Congress under section
21 240A of the Foreign Assistance Act of 1961 that includes
22 the information required by section 239(l)(3) of that Act
23 (as added by subsection (a) of this section), the Comptroller
24 General of the United States shall prepare and submit to
25 the Committee on Foreign Relations of the Senate and the

1 Committee on Foreign Affairs of the House of Representa-
 2 tives an independent assessment of the investment fund
 3 portfolio of the Overseas Private Investment Corporation,
 4 covering the items required to be addressed under such sec-
 5 tion 239(l)(3).

6 **SEC. 8. PROHIBITION ON ASSISTANCE TO DEVELOP OR**
 7 **PROMOTE CERTAIN RAILWAY CONNECTIONS**
 8 **AND RAILWAY-RELATED CONNECTIONS.**

9 Section 237 of the Foreign Assistance Act of 1961 (22
 10 U.S.C. 2197), as amended by section 6, is amended by add-
 11 ing at the end the following:

12 “(s) **PROHIBITION ON ASSISTANCE FOR CERTAIN RAIL-**
 13 **WAY PROJECTS.**—The Corporation may not provide insur-
 14 ance, reinsurance, a guaranty, financing, or other assist-
 15 ance to support the development or promotion of a railway
 16 connection or railway-related connection that connects
 17 Azerbaijan and Turkey without connecting or traversing
 18 with Armenia.”.

19 **SEC. 9. INELIGIBILITY OF PERSONS DOING CERTAIN BUSI-**
 20 **NESS WITH STATE SPONSORS OF TERRORISM.**

21 (a) **IN GENERAL.**—Section 231 of the Foreign Assist-
 22 ance Act of 1961 (22 U.S.C. 2191) is amended by—
 23 (1) striking “and” at the end of division (m);
 24 (2) by striking the period at the end of division
 25 (n) and inserting “; and”; and

1 (3) by adding at the end the following:

2 “(o) to decline to issue any contract of insurance or
3 reinsurance, or any guaranty, or to enter into any agree-
4 ment to provide financing or any other assistance for a pro-
5 spective eligible investor who enters, directly or through an
6 affiliate, into certain discouraged transactions with a state
7 sponsor of terrorism.”.

8 (b) *GENERAL PROVISIONS AND POWERS.*—Section 239
9 of the *Foreign Assistance Act of 1961* (22 U.S.C. 2199), as
0 amended by section 7, is amended by adding at the end
1 the following:

12 "(m) STATE SPONSOR OF TERRORISM.—

13 “(1) *IN GENERAL.*—In order to carry out the
14 policy set forth in section 231(o) of this Act, the Cor-
15 poration shall require a certification from an officer
16 of a prospective OPIC-supported United States inves-
17 tor that the investor and all affiliates of the investor
18 are not engaged in a discouraged transaction with a
19 state sponsor of terrorism.

20 “(2) *DISCOURAGED TRANSACTION*.—In this sub-
21 section, the term ‘discouraged transaction’ means any
22 of the following activities:

1 “(B) Any loan, or an extension of credit, to
2 the government of a state sponsor of terrorism by
3 the investor that—

4 “(i) is outstanding on the date the Cor-
5 poration enters into a contract with the in-
6 vestor; and

7 “(ii) that has a value of more than
8 \$5,000,000, including the sale of goods for
9 which payment is not required by the pur-
10 chaser within 45 days.

11 “(C) The transfer by the investor of goods
12 that are included on the United States Mun-
13 tions List, referred to in section 38(a)(1) of the
14 Arms Export Control Act (22 U.S.C. 2778(a)(1))
15 to a state sponsor of terrorism within the 3-year
16 period preceding the date the Corporation enters
17 into a contract with the investor.

18 “(3) EXCEPTION.—An officer of a prospective
19 OPIC-supported United States investor may provide
20 a certification under this subsection notwithstanding
21 the fact that an affiliate of the investor is engaged in
22 a discouraged transaction if the transaction is carried
23 out under a contract or other obligation of the affil-
24 iate that was entered into or incurred before the ac-
25 quisition of such affiliate by the prospective OPIC-

1 *supported United States investor or the parent com-*
2 *pany of the OPIC-supported United States investor.*

3 “(4) *DEFINITIONS.*—*In this subsection:*

4 “(A) *AFFILIATE.*—*The term ‘affiliate’*
5 *means any person that is directly or indirectly*
6 *controlled by, under common control with, or*
7 *controls a prospective OPIC-supported United*
8 *States investor or the parent company of such*
9 *investor.*

10 “(B) *INVESTMENT COMMITMENT IN THE EN-*
11 *ERGY SECTOR OF A STATE SPONSOR OF TER-*
12 *RORISM.*—*The term ‘investment commitment in*
13 *the energy sector of a state sponsor of terrorism’*
14 *means any of the following activities if such ac-*
15 *tivity is undertaken pursuant to a commitment,*
16 *or pursuant to the exercise of rights under a*
17 *commitment, that was entered into with the gov-*
18 *ernment of a state sponsor of terrorism or a non-*
19 *governmental entity in a country that is a state*
20 *sponsor of terrorism:*

21 “(i) *The entry into a contract that in-*
22 *cludes responsibility for the development or*
23 *transportation of petroleum or natural gas*
24 *resources located in a country that is a*
25 *state sponsor of terrorism, or the entry into*

1 *a contract providing for the general super-*
2 *vision or guaranty of another person's per-*
3 *formance of such a contract.*

4 “*(ii) The purchase of a share of owner-*
5 *ship, including an equity interest, in the*
6 *development of petroleum or natural re-*
7 *sources described in clause (i).*

8 “*(iii) The entry into a contract pro-*
9 *viding for the participation in royalties,*
10 *earnings, or profits in the development of*
11 *petroleum or natural resources described in*
12 *clause (i), without regard to the form of the*
13 *participation.*

14 “**(C) STATE SPONSOR OF TERRORISM.**—*The*
15 *term ‘state sponsor of terrorism’ —*

16 “*(i) means any country the govern-*
17 *ment of which the Secretary of State has de-*
18 *termined has repeatedly provided support*
19 *for acts of international terrorism pursuant*
20 *to section 6(j) of the Export Administration*
21 *Act of 1979, section 620A of this Act, or sec-*
22 *tion 40 of the Arms Export Control Act;*
23 *and*

24 “*(ii) does not include Southern Sudan,*
25 *Southern Kordofan/Nuba Mountains State,*

1 *Blue Nile State, and Abyei, Darfur, if the*
2 *Corporation, with the concurrence of the*
3 *Secretary of State, determines that pro-*
4 *viding assistance for projects in such re-*
5 *gions will provide emergency relief, promote*
6 *economic self-sufficiency, or implement a*
7 *nonmilitary program in support of a viable*
8 *peace agreement in Sudan, such as the*
9 *Comprehensive Peace Agreement for Sudan*
10 *and the Darfur Peace Agreement.”.*

11 **SEC. 10. CONGRESSIONAL NOTIFICATION REGARDING MAX-**

12 **IMUM CONTINGENT LIABILITY.**

13 *Section 239 of the Foreign Assistance Act of 1961 (22*
14 *U.S.C. 2199), as amended by sections 7, and 9, is amended*
15 *by adding at the end the following:*

16 “(n) CONGRESSIONAL NOTIFICATION OF INCREASE IN

17 **MAXIMUM CONTINGENT LIABILITY.**—*The Corporation shall*

18 *notify the Committee on Foreign Relations of the Senate*

19 *and the Committee on Foreign Affairs of the House of Rep-*

20 *resentatives not later than 15 days after the date on which*

21 *the Corporation’s maximum contingent liability out-*

22 *standing at any one time pursuant to insurance issued*

23 *under section 234(a), and the amount of financing issued*

24 *under sections 234(b) and (c), exceeds the Corporation’s*

1 maximum contingent liability for the preceding fiscal year
2 by 25 percent or more.”.

3 **SEC. 11. EXTENSION OF AUTHORITY TO OPERATE IN IRAQ.**

4 Section 239 of the Foreign Assistance Act of 1961 (22
5 U.S.C. 2199), as amended by sections 7, 9, and 10, is
6 amended by adding at the end the following:

7 “(o) *OPERATIONS IN IRAQ*.—Notwithstanding sub-
8 sections (a) and (b) of section 237, the Corporation is au-
9 thorized to undertake in Iraq any program authorized by
10 this title.”.

11 **SEC. 12. LOW-INCOME HOUSING.**

12 Not later than 1 year after the date of the enactment
13 of this Act, the Corporation shall submit a report to the
14 Committee on Foreign Relations of the Senate and the Com-
15 mittee on Foreign Affairs of the House of Representatives,
16 in consultation with appropriate departments, agencies,
17 and instrumentalities of the United States, as well as pri-
18 vate entities, on the feasibility of broadening the assistance
19 the Corporation provides to projects that provide support
20 to low-income home buyers. If the Corporation finds such
21 assistance is feasible, the Corporation shall identify and
22 begin to implement steps to proceed to provide such assist-
23 ance.

1 **SEC. 13. ASSISTANCE FOR SMALL BUSINESSES AND ENTI-**
2 **TIES.**

3 *Section 240 of the Foreign Assistance Act of 1961 (22*
4 *U.S.C. 2200) is amended by adding at the end the following:*
5 *“(c) RESOURCES DEDICATED TO SMALL BUSINESSES,*
6 *COOPERATIVES, AND OTHER SMALL UNITED STATES IN-*
7 *VESTORS.—The Corporation shall ensure that adequate per-*
8 *sonnel and resources, including senior officers, are dedi-*
9 *cated to assist United States small businesses, cooperatives,*
10 *and other small United States investors in obtaining insur-*
11 *ance, reinsurance, financing, and other assistance under*
12 *this title. The Corporation shall include, in each annual*
13 *report under section 240A, the following information with*
14 *respect to the period covered by the report:*

15 *“(1) A description of such personnel and re-*
16 *sources.*

17 *“(2) The number of United States small busi-*
18 *nesses, cooperatives, and other small United States in-*
19 *vestors that received insurance, reinsurance, financ-*
20 *ing, and other assistance from the Corporation, and*
21 *the dollar value of such insurance, reinsurance, fi-*
22 *nancing, and other assistance.*

23 *“(3) A description of the projects for which the*
24 *insurance, reinsurance, financing, and other assist-*
25 *ance was provided.”.*

1 **SEC. 14. TECHNICAL CORRECTIONS.**

2 (a) *PILOT EQUITY FINANCE PROGRAM.*—Section 234
3 of the Foreign Assistance Act of 1961 (22 U.S.C. 2194) is
4 amended—

5 (1) by striking subsection (g); and
6 (2) by redesignating subsection (h) as subsection
7 (g).

8 (b) *TRANSFER AUTHORITY.*—Section 235 of the For-
9 eign Assistance Act of 1961 (22 U.S.C. 2195) is amended—
10 (1) by striking subsection (e); and
11 (2) by redesignating subsection (f) as subsection
12 (e).

13 (c) *GUARANTY CONTRACT.*—Section 237(j) of the For-
14 eign Assistance Act of 1961 (22 U.S.C. 2197(j)) is amended
15 by inserting “insurance, reinsurance, and” after “Each”.

16 (d) *TRANSFER OF PREDECESSOR PROGRAMS AND AU-
17 THORITIES.*—

18 (1) *TRANSFER.*—Section 239 of the Foreign As-
19 sistance Act of 1961 (22 U.S.C. 2199), as amended by
20 sections 7, 9, 10, and 11, is amended—

21 (A) by striking subsection (b); and
22 (B) by redesignating subsections (c) through
23 (o) as subsections (b) through (n), respectively.

24 (2) *CONFORMING AMENDMENTS.*—

25 (A) Section 237(m)(1) of the Foreign Assist-
26 ance Act of 1961 (22 U.S.C. 2197(m)(1)) is

1 amended by striking “239(g)” and inserting
2 “239(f)”.

3 (B) Section 240A(a) of the Foreign Assist-
4 ance Act of 1961 (22 U.S.C. 2200A(a)) is
5 amended—

6 (i) in paragraph (1), by striking
7 “239(h)” and inserting “239(g)”; and
8 (ii) in paragraph (2)(A), by striking
9 “239(i)” and inserting “239(h)”.

10 (C) Section 209(e)(16) of the Admiral
11 James W. Nance and Meg Donovan Foreign Re-
12 lations Authorization Act, Fiscal Years 2000 and
13 2001 (as enacted into law by section 1000(a)(7)
14 of Public Law 106-113; 31 U.S.C. 1113 note) is
15 amended by striking “239(c)” and “2199(c)”
16 and inserting “239(b)” and “2199(b)”, respec-
17 tively.

18 (e) ADDITIONAL CLERICAL AMENDMENTS.—Section
19 234(b) of the Foreign Assistance Act of 1961 (22 U.S.C.
20 2194(b)) is amended by striking “235(a)(2)” and inserting
21 “235(a)(1)”.

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AN ACT

To reauthorize the programs of the Overseas Private Investment Corporation, and for other purposes.

MARCH 4, 2008

Reported with an amendment