The Heritage Foundation

BACKGROUNDER

No. 3312 | MAY 2, 2018

The BUILD Act's Proposed U.S. Development Finance Corporation Would Supersize OPIC, But Not Improve It

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Abstract

The Trump Administration has proposed consolidating existing development finance agencies to more effectively support U.S. foreign policy and security interests and counter the rising influence of China. Unfortunately, the BUILD Act legislation introduced in the House and Senate does not implement this vision. A new, limited, and carefully designed Development Finance Corporation (DFC) could play a useful, albeit small, role in serving U.S. strategic interests and foreign policy goals in low-income and lower-middle-income developing countries. Similarly, the DFC could be a useful tool for targeted efforts to counter China, but only if such a mission is explicit in statute. Absent these changes, the BUILD Act will only result in a super-sized OPIC that, due to extended authorization and the ability to use fees and other resources to pay for its operations, is less *subject to regular congressional oversight. Lawmakers and the Trump Administration should reject the BUILD Act as currently drafted and demand that any post-OPIC development finance entity hew to the smaller, more strategically focused alternative articulated in the President's budget.*

The Trump Administration proposed in the President's Fiscal Year (FY) 2019 Budget to consolidate "several private sector mobilization and development finance functions at various agencies, such as the Overseas Private Investment Corporation (OPIC) and USAID's [U.S. Agency for International Development's] Development Credit Authority [DCA], into a new, enhanced U.S. Development Finance Institution (DFI)."[1] The purpose is to improve coordination, enhance efficiency, support economic growth and development in developing economies by incentivizing private-sector investment, reduce

KEY POINTS

- Taxpayer subsidies to private American companies through the Overseas Private Investment Corporation may have been needed when it was established five decades ago, but they are far less necessary today.
- The Trump Administration has proposed consolidating and rebranding existing U.S. government development agencies into a new Development Finance Institution (DFI).
- A DFI with a mandate to support specific U.S. foreign policy and national security goals could play a useful, albeit small, role if it emphasizes U.S. support for policy reform in low-income and lower-middle-income developing countries lacking access to private capital markets.
- The pending legislation to create a new Development Finance Corporation would merely rebrand and double the size of OPIC. It mandates no substantive change in focus or operations and would not, contrary to proponents' arguments, require it to counter influence from China.

This paper, in its entirety, can be found at **http://report.heritage.org/bg3312**

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costs to the taxpayer, counter America's competitors, advance U.S. national security interests, and support U.S. companies, jobs, and exports.

Implicitly acknowledged is that OPIC and these other activities to be consolidated do *not* advance these goals effectively, which is consistent with the Administration's FY 2018 budget proposal to eliminate OPIC. The proposal for a DFI represents an attempt by the Administration to reorient development finance into a tool to advance U.S. interests, in particular countering the influence of China through initiatives like China's Belt & Road Initiative (BRI).

In response, the Better Utilization of Investments Leading to Development Act of 2018 or BUILD Act of 2018 has been introduced in the House (H.R. 5105) and Senate (S. 2463) to create a U.S. International Development Finance Corporation (DFC) by eliminating and consolidating OPIC and USAID's Development Credit Authority, enterprise funds, and Office of Private Capital and Micro Enterprise.[2] With minor differences, both bills establish a new organization with more than double OPIC's current contingent liability, empowered to conduct all of OPIC's current activities in 140 countries, and new authority to invest U.S. taxpayer dollars in equity investments in foreign countries.

Unfortunately, the bill fails entirely to address concerns that OPIC focuses insufficiently on low-income and lower-middle-income countries that lack access to private capital and does not encourage policy reforms to end the demand for development financing and insurance from U.S. taxpayers. In an attempt to entice support, proponents of the BUILD Act have argued that the DFC would be an effective counterweight to growing Chinese investments and influence through the BRI. However, the legislation does not require the DFC to fulfill this purpose.

Conservatives have long supported consolidation and even elimination of government agencies such as OPIC. Unfortunately, the BUILD Act of 2018 does this only symbolically—while creating a super-sized OPIC-like institution in its place. Lawmakers and the Trump Administration should reject this DFC proposal and demand the smaller, more focused DFI alterative articulated in the President's budget.

What Is Wrong with OPIC

OPIC was established by President Richard M. Nixon in 1969 and began operations in 1971. The corporation was instructed to "contribute to the economic and social progress of developing nations" by encouraging venture capital to pursue investments that might normally be deemed too risky, and by placing "the credit of the United States Government behind the insurance and guaranties which the Corporation would sell to U.S. private investors."[3] OPIC provides three types of services:

1. Providing loans and loan guarantees for investments in developing and emerging markets;

2. Offering "political risk insurance" covering losses resulting from events such as coups, terrorism, or expropriation; and

3. Supporting investment funds that make direct equity and equity-related investments in new, expanding, or privatizing emerging-market companies.[4]

While there may have been a legitimate need for government services of this kind in 1969, in today's global economy, many private firms in the developed and developing world offer investment loans and political risk insurance. OPIC can displace these private options by offering lower-cost services using the faith and credit of the U.S. government (i.e., taxpayers). Indeed, OPIC products may actually *undermine* development by accepting customers who might otherwise use financial institutions in middle-income countries, such as Brazil and India, which have reasonably sound domestic financial institutions.

1. Office of Management and Budget, *Fiscal Year 2019: An American Budget*, February 2018, https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf (accessed April 19, 2018).
2. The BUILD Act of 2018, S. 2463, 115th Cong., 2nd Sess., § 304(g), https://www.foreign.senate.gov/imo/media/doc/BUILD%20Act%20of%202018%20Text.pdf (accessed April 25, 2018), and The BUILD Act of 2018, H.R. 5105, 115th Cong., 2nd Sess., § 304(g), https://www.congress.gov/115/bills/hr5105/BILLS-115hr5105ih.pdf (accessed April 25, 2018). Because the text of both bills is substantially similar, throughout this paper, the authors will cite to the Senate bill unless otherwise specified.
3. President Richard M. Nixon, "Special Address to the Congress on Foreign Aid," May 28, 1969, http://www.presidency.ucsb.edu/ws/?pid=2073 (accessed April 19, 2018).
4. Overseas Private Investment Corporation, "What We Offer," http://www.opic.gov/what-we-offer/overview (accessed April 19, 2018).

Worse, unless specifically requiring policy reforms, OPIC rewards bad economic policies. Countries that have the best investment climates are most likely to attract private foreign investors. When OPIC guarantees investments in risky foreign environments, those countries have less reason to adopt policies that are friendly to foreign investors. Companies that want to invest in emerging markets should be free to do so—but they are not entitled to taxpayer support. Investors should base their decisions not on whether a U.S. government agency will subsidize the risks but on whether investment in a country makes economic sense.

In addition to questionable judgement in some project decisions,[5] a review of OPIC projects raises doubts about the extent to which advancing U.S. economic, security, or foreign policy interests is considered in the selection process. The following are specific examples of OPIC projects in countries with ample access to international financial markets or lack a compelling national security or foreign policy justification and, therefore, should raise questions in Congress:

- Financing for Papa John's pizza franchises in Russia,[6]
- Financing a chain of Dunkin Donuts and Wendy's branded franchise restaurants in Georgia,[7] and
- Developing Century 21–brand real estate franchising in Brazil.[8]

These projects continue under the Trump Administration. In 2018, OPIC approved a loan-guarantee project for a Texas company to acquire 104 Starbucks stores and develop 45 additional stores in Brazil and a $20 million loan establish up to eight McDonald's-branded restaurants in Georgia.[9]

OPIC has also fully embraced the Obama Administration's obsessive focus on renewable energy. According to the Competitive Enterprise Institute, "In recent years, OPIC has increasingly emphasized environmental factors in its investment decisions. In 2014, more than 40 percent of its resources went to renewable energy projects."[10] These projects include $46 million in insurance for an unnamed "Eligible U.S. Investor" for a Kenyan wind power project. In 2018 alone OPIC approved photovoltaic plants generating electricity from solar in Jordan, Brazil, and Burundi and a wind farm in Ukraine.[11] In other words, four of 11 OPIC projects approved through mid-April 2018 involved renewable energy projects.

In addition, OPIC directs only a small share of its portfolio to low-income countries, even though OPIC was established to "contribute to the economic and social progress of developing nations" that lack

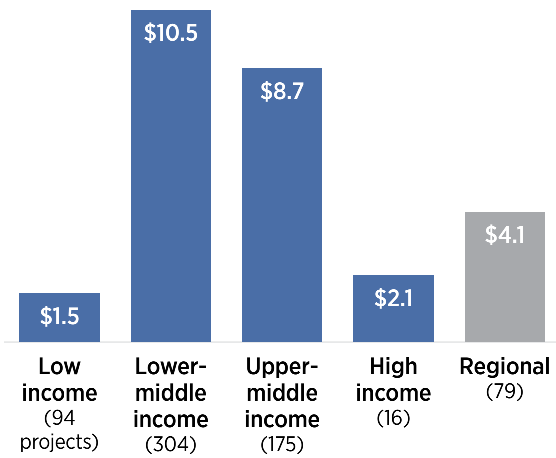
5. OPIC approved $85 million in loans for a major hotel and apartment complex in Afghanistan that were not properly overseen and never completed. "As a result, the $85 million in loans is gone, the buildings were never completed and are uninhabitable, and the U.S. Embassy is now forced to provide security for the site at additional cost to U.S. taxpayers." John F. Sopko, Special Inspector General for Afghanistan Reconstruction, letter to OPIC President and CEO Elizabeth Littlefield, November 14, 2016, https://www.sigar.mil/pdf/special%20projects/SIGAR-17-13-SP.pdf (accessed April 19, 2018).
6. OPIC approved a $10 million finance project in 2010 to "[e]xpand Papa John's franchise in Moscow and Moscow Oblast" and a $2.7 million finance project in 2011 for "[e]xpansion of 17 Papa John's franchise stores in Moscow." Projects available at Overseas Private Investment Corporation, "Active OPIC Projects," https://www.opic.gov/opic-action/active-opic-projects (accessed April 30, 2018).
7. OPIC approved a $10.6 million finance project in 2015 for "development, establishment, and operation of 35 restaurants of the Dunkin Donuts franchise brand throughout Georgia" and a $18.9 million finance project in 2013 for a "Wendy's Master Franchise Startup in Georgia." Projects available at Overseas Private Investment Corporation, "Active OPIC Projects," https://www.opic.gov/opic-action/active-opic-projects (accessed April 19, 2018).
8. OPIC approved a $3 million finance project in 2010 for "real estate franchise for CENTURY 21 brand for Brazil." Projects available at Overseas Private Investment Corporation, "Active OPIC Projects," https://www.opic.gov/opic-action/active-opic-projects (accessed April 30, 2018).
9. Overseas Private Investment Corporation, "Information Summary for the Public: Brazil," https://www.opic.gov/sites/default/files/files/9000052729.pdf (accessed April 25, 2018), and Overseas Private Investment Corporation, "Information Summary for the Public: Georgia," https://www.opic.gov/sites/default/files/files/9000042620.PDF (accessed April 25, 2018).
10. Ryan Young, "The Case Against the Overseas Private Investment Corporation: OPIC Is Obsolete, Ineffective, and Harms the Poor," Competitive Enterprise Institute *OnPoint* No. 208, September 24, 2015, https://cei.org/sites/default/files/Ryan%20Young%20-%20The%20Case%20Against%20OPIC.pdf (accessed April 19, 2018).
11. Overseas Private Investment Corporation, "All Project Descriptions: 2018," https://www.opic.gov/opic-action/all-project-descriptions (accessed April 25, 2018).

CHART 1

OPIC Not Focusing on Low-income Countries

Nearly half of the value of OPIC commitments for individual country projects are in upper-middle income and high-income countries.

OPIC COMMITMENT LEVELS AS OF MARCH 2018, IN BILLIONS OF DOLLARS



SOURCES: OPIC, "Active OPIC Projects," https://www.opic.gov/opic-action/active-opic-projects (accessed March 20, 2018), and The World Bank, "World Bank Country and Lending Groups," https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups (accessed March 20, 2018).

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access to private investment, which today are overwhelmingly low-income countries. As of March 2018, OPIC listed 668 "Active OPIC Projects" dating back to 2003 and involving a total commitment of $27 billion. About 88 percent of these projects (589 of 668) focused on specific countries with the balance applied regionally across multiple countries.[12]

Analysis of OPICs current projects for this report shows that only 16 percent of active projects (comprising about 7 percent of the dollar value) were directly located (not inclusive of regional projects) in low-income countries as defined by the World Bank.[13] In fact, as of March 2018, OPIC has more active projects in upper-middle-income countries (175) than in low-income countries (94). Of the 20 countries with 10 or more active OPIC projects, only four (Afghanistan, Liberia, Senegal, and Tanzania) are low-income countries, while six are upper-middle-income countries (Costa Rica, Mexico, Lebanon, Turkey, Russia, and Panama). In addition, OPIC's $2.1 billion in financial commitments for 16 active projects in high-income countries far exceeds that of the $1.5 billion in financial commitments for projects in low-income countries.

Since OPIC is supposed to complement—not compete with—the private sector, the expansion of investment in developing countries and increased access to international financial markets should have resulted in a shift in OPIC's portfolio toward countries that lack such access. But no such trend is evident. For instance, only 18 percent of active OPIC projects from 2007 involve low-income countries, accounting for 20 percent of commitments. In 2017, however, low-income countries represent 11 percent of active OPIC projects accounting for just 7 percent of commitments. In the first three months of 2018, country-specific projects listed as Active OPIC Projects were located exclusively in lower-middle-income countries (India, Jordan, and Mongolia) or upper-middle-income countries (Colombia and Brazil).[14]

Assessing whether a project under consideration is not competing with the private sector is difficult to verify definitively. Even supporters of the organization note:

> The agency currently requires that prospective clients have explored private alternatives before formally considering a project proposal. More broadly, however, OPIC does not report on whether its financial support catalyzed other financiers' involvement through early stage support. The agency typically does not disclose whether other

12. Overseas Private Investment Corporation, "Active OPIC Projects," https://www.opic.gov/opic-action/active-opic-projects (accessed April 19, 2018).
13. World Bank Group, "World Bank Country and Lending Groups," https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups (accessed April 19, 2018).
14. Overseas Private Investment Corporation, "Active OPIC Projects," and World Bank Group, "World Bank Country and Lending Groups."

public or private financiers are involved in a project, or the specific terms of that involvement.[15]

The authors recommend stronger requirements to demonstrate need for capital and that OPIC involvement would actually be additional rather than displacing private-sector options. They also note critically:

> OPIC's portfolio has become overly skewed toward higher income countries.... Given OPIC's mandate as a development agency, its portfolio should exhibit a bias toward low- and lower-middle income countries. Instead, OECD members and higher income countries comprise a larger share of the portfolio than might be expected.... Since 2000, nearly half of OPIC's country-specific commitments have focused on upper-middle income and high-income countries, such as Brazil, Israel, Mexico, Russia, and Turkey. In 2014, these wealthier countries accounted for over 70 percent of new OPIC commitments. By contrast, the share targeting the poorest countries has been on a downward trend for over a decade. In 2014, low-income countries accounted for only 1 percent of OPIC's commitments.[16]

Narrowing the pool of eligible countries to low-income and lower-middle-income countries would accomplish multiple goals, including focusing OPIC on its development mission; increasing chances that its projects are additional, since lower-income countries are more likely to lack private-sector options; and freeing up resources for OPIC's operations in low-income and lower-middle-income countries that are more likely to lack access to private capital.

Looking at the bigger picture, OPIC is less and less necessary as developing country access to international financial markets expands and financial flows to developing countries grow. Private-sector investment in developing countries was relatively scarce when OPIC was created nearly five decades ago. As former Secretary of State Hillary Clinton noted, "In the 1960s, [foreign] assistance represented 70 percent of the capital flows going into developing countries. But today, because of private sector growth and increased trade, domestic resources, remittances, and capital flows, it is just 13 percent—even as development budgets have continued to increase."[17]

This trend has diminished the role played by governmental development assistance and development finance. As illustrated in Chart 2, direct investment in developing countries has increased dramatically over the past 26 years. According to United Nations data, annual net inflows of foreign direct investment to even the world's least-developed countries were six times (611 percent) higher in 2016 than in the year 2000.[18] The *Index of Global Philanthropy and Remittances* also illustrates that private financial flows—from charities, foundations, corporations, churches, and individuals—to developing countries now dwarf development assistance.

Moreover, the pool of countries providing development assistance has grown beyond the traditional 30 OECD Development Assistance Committee (DAC) donors[19] to include an additional 30 developed and developing countries with foreign assistance programs.[20] In fact, OPIC has active projects in two DAC members (Hungary and South Korea) and two other high-income countries with their own foreign aid programs (Chile and Israel). In addition, OPIC has active projects in 13 upper-middle-income coun-

15. Benjamin Leo and Todd Moss, "How Does OPIC Balance Risks, Additionality, and Development? Proposals for Greater Transparency and Stoplight Filters," Center for Global Development *Policy Paper* No. 083, May 2016, https://www.cgdev.org/sites/default/files/CGD-Leo-Moss-OPIC-Balancing-Risks-Transparency-Policy-Paper.pdf (accessed April 30, 2018).
16. Ibid.
17. U.S. Department of State, "Keynote at the Opening Session of the Fourth High-Level Forum on Aid Effectiveness," November 30, 2011, https://2009-2017.state.gov/secretary/20092013clinton/rm/2011/11/177892.htm (accessed April 19, 2018).
18. Hudson Institute, "The Index of Global Philanthropy and Remittances: 2016," p. 5, https://s3.amazonaws.com/media.hudson.org/files/publications/201703IndexofGlobalPhilanthropyandRemittances2016.pdf (accessed April 25, 2018).
19. The 30 members of the OECD Development Assistance Committee (DAC) are: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, the European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Organization for Economic Co-operation and Development, "DAC Members," http://www.oecd.org/dac/dacmembers.htm (accessed April 19, 2018).
20. Organization for Economic Co-operation and Development, "Development Finance of Countries Beyond the DAC," http://www.oecd.org/dac/stats/non-dac-reporting.htm (accessed April 19, 2018).

CHART 2

Investment in Developing Nations

Foreign direct investment (FDI) into developing countries has increased dramatically since 1990. And while comparatively small, gains for the least-developed countries have also been strong, rising from 0.3 percent of total FDI in 1990 to more than 2 percent in 2016.

FDI INFLOWS IN BILLIONS OF DOLLARS

SHARE OF TOTAL FDI INFLOWS IN 2016

SOURCE: United Nations Conference on Trade and Development, "World Investment Report 2017: Annex Tables," Annex Table D1, http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Annex-Tables.aspx (accessed July 7, 2017).

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tries with foreign-assistance programs (Azerbaijan, Brazil, Bulgaria, Colombia, Costa Rica, Croatia, Kazakhstan, Mexico, Romania, Russia, South Africa, Thailand, and Turkey) and three lower-middle-income countries with foreign-assistance programs (East Timor, India, and Indonesia).[21] In fact, OPIC-eligible countries like Brazil, India, Malaysia, and Turkey "now have public entities that provide project and trade finance, as well as guarantees."[22] Why governments that provide tens or hundreds of millions of dollars in foreign assistance to other countries each year or have their own development finance programs need OPIC assistance to insure or finance development efforts in their own countries is less than clear.

As with private investment trends to developing countries, private political-risk insurance is more available now than it was when OPIC was established. That shift is reflected in OPIC's portfolio. As noted by the Congressional Research Service:

21. Ibid.

22. Ben Leo and Todd Moss, "Bringing U.S. Development Finance into the 21st Century," Center for Global Develoment, July 20, 2015, https://www.cgdev.org/sites/default/files/whw-usdfc.pdf (accessed April 30, 2018).

> Historically, OPIC's insurance activities accounted for the bulk of its portfolio. In recent years, however, the share of insurance in OPIC's total portfolio has declined to around 20% [sic]. This shift is due to a number of factors, including the greater role of the private sector in providing PRI [political risk insurance] for developing countries as well as the rise of other development finance institutions in this space, including the World Bank's Multilateral Investment Guaranty Agency (MIGA).[23]

The bottom line is that options for financing and insuring investments in developing countries are increasingly numerous—eliminating the need for U.S. government-supported investments as an economic development tool in most cases.

Old Wine, New Bottle

For these reasons and others, policy analysts and economists have criticized OPIC and similar programs for decades.[24] As noted by Milton Friedman, "I cannot see any redeeming aspect in the existence of OPIC. It is special interest legislation of the worst kind; legislation that makes the problem it is intended to deal with worse rather than better.... OPIC has no business existing."[25]

Politicians across the political spectrum have similarly opposed reauthorization of OPIC. While Chairman of the House Budget Committee, Governor John Kasich of Ohio sought to "kill" OPIC in the 1990s cosponsoring the OPIC Termination Act in 1997 with then-Congressman, now Senator, Bernie Sanders (I–VT).[26] Among the 24 co-sponsors were Tom Campbell (R–CA), Peter DeFazio (D–OR), Jesse Jackson (D–IL), William Lipinski (D–IL), Dan Miller (R–FL), Ron Paul (R–TX), Collin Peterson (D–MN), Dana Rohrabacher (R–CA), and Mark Sanford (R–SC).

Representative Ed Royce (R–CA), current Chairman of the House Foreign Affairs Committee, opposed reauthorizing OPIC in 2007 stating, "I remain unconvinced that OPIC is doing something worthwhile that the private sector wouldn't do."[27] Royce and then-Congressman, now Senator, Jeff Flake (R–AZ) also co-sponsored the Kick OPIC Act of 2010 with Representative Patrick Murphy (D–PA).[28]

More recently, the FY 2017 Republican Study Committee budget document opposed reauthorization of OPIC and President Trump's FY 2018 budget sought to end OPIC's authority to approve new transactions and limit its mandate to winding down its current portfolio, noting that

> Development Finance Institutions (DFIs) like OPIC can at times displace the private sector, particularly in emerging and developing markets that have active international finance firms or domestic financial institutions capable of providing similar financing. While the Administration wants U.S. businesses to invest in emerging markets to grow their businesses and create American jobs, private sector financing is often available.[29]

23. Shayerah Ilias Akhtar, "The Overseas Private Investment Corporation: Background and Legislative Issues," Congressional Research Service *Report for Congress*, September 25, 2013, https://fas.org/sgp/crs/misc/98-567.pdf (accessed April 19, 2018).
24. Timothy P. Carney, "Republicans Try to Sneak Corporate Welfare Agency OPIC Through the House," *American Enterprise Institute*, May 6, 2014, https://www.aei.org/publication/republicans-try-to-sneak-corporate-welfare-agency-opic-through-the-house/print/ (accessed April 19, 2018); Young, "The Case against the Overseas Private Investment Corporation"; Ian Vasquez and John Welborn, "Reauthorize or Retire the Overseas Private Investment Corporation?" Cato Institute *Foreign Policy Briefing* No. 78, September 15, 2003, https://object.cato.org/sites/cato.org/files/pubs/pdf/fpb78.pdf (accessed April 19, 2018); Bryan Riley, Brett Schaefer, and James Roberts, "Congress Should Support the Trump Administration's Proposal to Close Down OPIC," Heritage Foundation *Issue Brief* No. 4735, July 14, 2017, https://www.heritage.org/markets-and-finance/report/congress-should-support-the-trump-administrations-proposal-close-down; and Veronique de Rugy, "Corporate Welfare and the Overseas Private Investment Corporation," George Mason University Mercatus Center, July 2, 2015, https://www.mercatus.org/expert_commentary/corporate-welfare-and-overseas-private-investment-corporation (accessed April 19, 2018).
25. Milton Friedman, letter to Representative John R. Kasich (R–OH), Chairman, Committee on the Budget, U.S. House of Representatives, September 5, 1996, quoted in Bruce M. Rich, testimony before the Committee on International Relations, U.S. House of Representatives, June 10, 2003, p. 136, http://commdocs.house.gov/committees/intlrel/hfa87675.000/hfa87675_0f.htm (accessed April 19, 2018).
26. OPIC Termination Act, H.R. 387, 105th Cong., 1st Sess., https://www.govtrack.us/congress/bills/105/hr387/text/ih (accessed April 19, 2018).
27. Carney, "Republicans Try to Sneak Corporate Welfare Agency OPIC Through the House."
28. Kick OPIC Act of 2010, H.R. 4980, 111th Congress, 2nd Sess., https://www.congress.gov/bill/111th-congress/house-bill/4980/cosponsors.
29. Office of the President of the United States, Office of Management and Budget, *Major Savings and Reforms: Budget of the U.S. Government*, 2017, p. 102, https://www.gpo.gov/fdsys/pkg/BUDGET-2018-MSV/pdf/BUDGET-2018-MSV.pdf (accessed April 19, 2018).

In its FY 2019 budget proposal, however, the Trump Administration modified its position. While still calling for ending OPIC, it did so as part of

> a consolidation of various U.S. development finance functions, such as the Overseas Private Investment Corporation (OPIC) and the U.S. Agency for International Development's (USAID's) Development Credit Authority (DCA), to create a new, standalone Development Finance Institution (DFI).[30]

The Administration's proposal emphasized the cost savings realized from consolidation and reducing fragmentation, underscored the goal of advancing U.S. national security objectives and countering America's competitors, specified that it would "encourage but not displace private sector investment in frontier markets," and promoted "sustainable and responsible policies in recipient countries."[31]

Unfortunately, however, the Administration offered few details on how the DFI would be different from the organizations it was to replace. The budget request was slightly higher than OPIC's FY 2018 appropriation and would include a transfer of $56 million in foreign-assistance funds, which indicates that the Administration's proposal was more a reallocation of existing resources rather than a budget reduction or increase. In addition, as outlined in the FY 2019 budget request, DFI authorities and operations would be indistinguishable from OPIC. The DFI would issue loans and guarantees, political risk, and expropriation insurance; conduct project-specific feasibility studies; and employ other unspecified "tools as authorized."[32]

While the Trump Administration proposal would merely rebrand OPIC, proposed legislation in the House and Senate would supersize it. With minor differences, the BUILD Act of 2018 was introduced in the House (H.R. 5105) by Representative Ted Yoho (R–FL) and in the Senate (S. 2463) by Senator Bob Corker (R–TN).

The BUILD Act would create a U.S. International Development Finance Corporation (DFC) by eliminating and consolidating OPIC and USAID's Development Credit Authority, enterprise funds, and Office of Private Capital and Micro Enterprise. However, there are a number of issues of deep concern in the proposal.

Doubling in Size, Automating Future Growth, and Weakening Congressional Oversight. Under current law, OPIC has a maximum contingent liability limit of $29 billion.[33] OPIC reported that as of September 30, 2017, OPIC's exposure was $23.2 billion.[34] The entire portfolio of the DCA between 1999 and 2016 was $4.8 billion,[35] but its administrative expenses were $10 million in FY 2017.[36] USAID's enterprise funds, such as the Tunisian American Enterprise Fund and the Egyptian–American Enterprise Fund, are relatively modest, totaling a few hundred million dollars in resources.[37] The Office of Private Capital and Micro Enterprise has a support focus and does not even merit a separate budget line in the Congressional Budget Justification.[38]

Both congressional versions of the BUILD Act would immediately set the maximum contingent liability of the DFC to $60 billion—roughly double

30. U.S. Department of State, *Congressional Budget Justification: Department of State, Foreign Operations, and Related Programs*, February 12, 2018, p. 129, https://www.usaid.gov/sites/default/files/documents/1868/FY_2019_CBJ.pdf (accessed April 19, 2018).
31. Ibid.
32. Ibid.
33. Overseas Private Investment Corporation, "Annual Management Report of the Overseas Private Investment Corporation for Fiscal Years 2016 and 2017," November 15, 2017, p. 5, https://www.opic.gov/sites/default/files/files/OPIC_FY_2017_Annual_Management_Report.pdf (accessed April 19, 2018).
34. Ibid.
35. U.S. Agency for Inernational Development, "Development Credit Authority: Putting Local Wealth to Work," https://www.usaid.gov/sites/default/files/documents/1865/DCA_One-Pager_48.pdf (accessed April 19, 2018).
36. U.S. Department of State, *Congressional Budget Justification: Foreign Operations*, 2018, p. 10, https://www.state.gov/documents/organization/279517.pdf (accessed April 19, 2018).
37. U.S. Embassy in Tunisia, "Tunisian American Enterprise Fund (TAEF)," https://tn.usembassy.gov/embassy/tunis/usaid-tunisia/economic-growth/taef/ (accessed April 3, 2018), and Egyptian–American Enterprise Fund, "The EAEF Mandate," http://eaefund.org/about-eaef/ (accessed April 19, 2018).
38. U.S. Agency for International Development, "Office of Private Capital and Microenterprise," https://www.usaid.gov/pcm (accessed April 19, 2018).

the current resources for the consolidated entities. It is unclear why this massive increase needs to occur. Based on its 2017 report, OPIC has approximately $6 billion in unused contingent liability. In addition to doubling the size of the DFC immediately versus OPIC and other activities to be consolidated, the BUILD Act would automatically adjust its contingent liability upward every five years at the percentage increase in the Consumer Price Index with no additional congressional authorization required. In other words, assuming inflation continues to be within the 2 percent to 3 percent range that has characterized the U.S. economy this century, the DFC's contingent liability would automatically grow 10 percent to 15 percent every five years in perpetuity without any specific future authorization from Congress.

Moreover, unlike OPIC, whose operations must be funded through annual appropriations, the BUILD Act specifically authorizes the DFC to retain "all funds, fees, revenues, and income transferred to or earned by the Corporation, from whatever source derived" and use them for the purposes of the corporation, including expenses and operations.[39] Thus, the DFC would not be contributing funds to the U.S. Treasury most years, as OPIC does, but recycling them back into the DFC. As if this were not enough, the legislation authorizes "to be appropriated to the Corporation, to remain available until expended, such amounts as may be necessary from time to time to replenish or increase the Corporate Capital Account."[40]

Finally, the BUILD Act authorizes the DFC for an extended period. Specifically, H.R. 5105 authorizes DFC activities for "7 years after the date of the enactment of this Act."[41] S. 2463 authorizes DFC activities through September 30, 2038—20 years after the expected enactment of the Build Act.[42]

Taken together, the self-funding authority and extended authorization works to insulate the DFC from congressional scrutiny. As one proponent of this approach argues, "That OPIC requires congressional discretion to approve even its most basic ongoing expenses is representative of how ossified these instruments have become."[43] As frustrating as the legislative process might be, the appropriation and authorization process is fundamental to congressional oversight. Insulating the DFC from annual appropriations and regular reauthorization, as the BUILD Act would do, gravely undermines accountability.

Involvement in Countries with Access to Private Capital Markets. OPIC has active projects in 115 countries, but states that its services are available in "more than 160 countries worldwide."[44] The bulk of OPIC projects are in lower-middle-income and upper-middle-income countries that, in many cases, can access private capital via international financial markets and/or have reasonably developed domestic financial institutions. Indeed, some countries have foreign assistance, development finance programs, and even space programs of their own—yet remain eligible for U.S. taxpayer subsidized insurance, loans, and guarantees.

The BUILD Act continues this practice. The DFC would be authorized to operate in 31 low-income (less than $1,005 GNI per capita), 53 lower middle-income ($1,006 to $3,955), and 56 upper-middle-income ($3,956 to $12,235) countries as defined by the World Bank. Eligible DFC countries, then, would include Brazil, China, Russia, Turkey, and even a few European countries. The legislation instructs the DFC to prioritize low-income and lower-middle-income countries. However, the only requirement the DFC has to fulfill in order to operate in upper-middle-income countries is for the President to determine that "such support furthers the national economic or foreign policy interests of the United States" and that the project is "highly likely to be highly developmental or provide developmental benefits to the poorest population of that country." In practice, these are subjective judgments that pose no meaningful restriction.

39. The BUILD Act, § 304(g).
40. The BUILD Act, § 304(d).
41. The BUILD Act, § 204.
42. Ibid.
43. Brendan McBryde, "Rethinking How We Handle Development Finance," *The Hill*, April 16, 2018, http://thehill.com/blogs/congress-blog/foreign-policy/383306-rethinking-how-we-handle-development-finance (accessed April 19, 2018).
44. Overseas Private Investment Corporation, "Who We Are."

If Congress truly wishes to encourage free-market policies and help countries "graduate from their status as recipients of assistance," it is sending the wrong signal by providing U.S. taxpayer subsidized insurance, loans, and other assistance to countries where private-sector options are available absent an explicit foreign policy or national security justification. More fundamentally, why is the U.S. offering these services to countries whose governments in some cases choose of their own volition to fund foreign aid programs rather than using its resources to address domestic financing gaps in their own countries?

No Incentive for Countries to Adopt Sound Policies. The BUILD Act states that the DFC should build and strengthen civic institutions, promote competition, provide for public accountability and transparency, and "help countries currently receiving United States assistance to graduate from their status as recipients of assistance." Indeed, at a recent hearing Representative Ed Royce (R–CA) stated, "[W]e can and should do more to support international economic development with partners who have embraced the private sector-driven development model."[45] However, unlike the Millennium Challenge Corporation—which imposes specific eligibility requirements designed to encourage countries to embrace economic freedom, the rule of law, and other policies contributive to economic growth—the BUILD Act has no such standards nor any requirement to promote such policies.

In fact, the BUILD Act would send the opposite signal. Through its services, the DFC would be implicitly saying that these types of development activities require government intervention. The legislation underscores this message by granting the DFC authority, not currently available to OPIC, to make equity investments:

> 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.[46]

Presumably, this authority allows the DFC to invest U.S. taxpayer funds, not just in private businesses, but in state-owned enterprises as well. In fact, the legislation instructs the DFC to

> develop appropriate policies and guidelines to ensure that support provided under title II to a state-owned enterprise, sovereign wealth fund, or a parastatal entity engaged in commercial activities or to a project in which such an entity or fund is participating is provided under appropriate principles of competitive neutrality.[47]

Allowing a U.S. government agency to become an equity investor in private and public businesses in 140 countries around the world is contradictory to the stated purpose of the BUILD Act to promote private-sector development. Historically, when the U.S. government has taken equity stakes in or provided loan guarantees to private American companies it has provoked an outcry (e.g., the bailouts of Chrysler (1979)[48] and General Motors (2009)[49]).

If Congress wishes the DFC to engage only "with partners who have embraced the private sector-driven development model" or encourage the adoption of such policies, then it should include this requirement in the legislation and not permit equity investments, particularly with state-owned enterprises.

45. Patricia Zengerle, "With Eye Toward China, U.S. Congress Eyes Development Finance Overhaul," Reuters, April 11, 2018, https://www.reuters.com/article/us-usa-development-opic/with-eye-toward-china-u-s-congress-eyes-development-finance-overhaul-idUSKBN1HI2WC (accessed April 19, 2018).
46. The BUILD Act, § 201(b)(1).
47. The BUILD Act, § 505(a).
48. James K. Hickel, "The Chrysler Bail-Out Bust," Heritage Foundation *Backgrounder* No. 276, July 13, 1983, https://www.heritage.org/government-regulation/report/the-chrysler-bail-out-bust.
49. James Gattuso, "General Motors Bankruptcy and Nationalization: Exit Strategy Needed," Heritage Foundation *Backgrounder* No. 2462, May 29, 2009, https://www.heritage.org/government-regulation/report/general-motors-bankruptcy-and-nationalization-exit-strategy-needed.

Missing Mandate to Counter U.S. Adversaries or Advance U.S. National Security Interests. A key argument made by proponents of the DFC that is designed to attract support from Republicans and the Trump Administration is that it would serve as a counterweight to growing Chinese influence through its Belt and Road Initiative investments.[50] Current OPIC CEO Ray Washburne clarified this priority in congressional testimony:

> While I was in Asia, I saw how China's One Belt, One Road initiative is changing the political and economic landscape. The amount of investment China reportedly has planned for this initiative is staggering—aimed at interconnecting about 65 percent of the world's population, about one-third of the world's GDP, and about a quarter of all goods and services.
>
> Of course, a condition of many of these loans is that Chinese firms—and labor—get the business. And we know what happens when countries can't pay. In December, for example, Sri Lanka gave control of a strategic port to Beijing for 99 years. This comes as China has been stepping up its presence in the Indian Ocean region and its critical shipping lanes.[51]

The BUILD Act, however, fails to mandate any such strategic focus for the proposed DFC. In general, the BUILD Act states that the DFC should, as a matter of policy, "complement and be guided by overall United States foreign policy and development objectives" and "advance the foreign policy interests of the United States" as a purpose.[52] However, these general guidelines lack any specificity that would require or mandate the DFC to counter Chinese efforts that undermine American foreign policy or security interests. The vague guidance included in the BUILD Act could have multiple interpretations and would be consistent with OPIC's past history of serving as a slush fund to support presidential priorities and create "deliverables" (e.g., newsworthy but mostly inconsequential agreements for photo-op signature ceremonies at head-of-state meetings). As explained in a Center for Global Development blog post:

> OPIC's profitability and flexibility often make it the go-to agency for quick deliverables, such as when the White House has to make a sudden commitment or the USG needs to provide a jolt in a tough region. (Uh-oh, do you need a big global commitment on Renewables? Women entrepreneurs in Turkey? Solar panels for South Africa? Small business in Egypt? Who you gonna call? OPIC.)[53]

Indeed, the unspecified foreign policy interests of the U.S. outlined in the BUILD Act would just as easily encompass the climate, economic, and social priorities of OPIC that were emphasized by the Obama Administration. In other words, the BUILD Act seems designed to continue OPIC's "quick deliverable" role rather than a focused instrument to advance U.S. foreign policy and national security goals. It would also continue to be an attractive source of taxpayer-subsidized financing and insurance for politically connected American companies.

This is hardly surprising. The idea to create a DFC predates the Trump Administration and the relatively recent focus on countering China's BRI.[54] In fact, the BUILD Act very closely resembles a 2015 Center for Global Development (CGD) proposal for a "Self-Sustaining, Full-Service U.S. Development Finance Corporation" designed to expand the size,

50. Liz Schrayer, "America Cannot Afford to Be Left Behind on Global Development," *The Hill*, March 19, 2018, http://thehill.com/opinion/international/379128-america-cannot-afford-to-be-left-behind-on-global-development (accessed April 19, 2018).
51. Statement of Ray W. Washburne, "Financing Overseas Development: The Administration's Proposal," testimony before the Foreign Affairs Committee, U.S. House of Representatives, April 11, 2018, https://www.opic.gov/media/speeches-testimonies/financing-overseas-development-administrations-proposal (accessed April 30, 2018).
52. The BUILD Act, § 101(8) and 102(b).
53. Todd Moss and Ben Leo, "Seven Steps to Supercharge OPIC, America's Unsung Development Hero," Center for Global Development, December 12, 2012, https://www.cgdev.org/blog/seven-steps-supercharge-opic-america%E2%80%99s-unsung-development-hero (accessed April 19, 2018).
54. See, for instance, Todd Moss and Ben Leo, "Development without New Money? A Proposal for a Consolidated U.S. Development Bank," Center for Global Development, April 6, 2011, https://www.cgdev.org/blog/development-without-new-money-proposal-consolidated-us-development-bank (accessed April 19, 2018).

authorities, and permanence of a U.S. government-funded development finance entity by combining OPIC, USAID's Development Credit Authority, and related functions under one roof.[55]

The CGD proposal, which was heartily endorsed by the Obama Administration,[56] did not articulate a foreign policy and national security focus for the DFC and had difficulty garnering support from Republicans. In a 2017 report, Democratic Senate staff stated that they were "thinking carefully about how to package the bill [to reauthorize and expand OPIC] and present it in a way that would encourage and allow Republicans to support it."[57] The rhetorical focus on countering China reflects this strategy. However, the lack of any requirement in the BUILD Act to counter the BRI reveals that this is more a political tactic than a serious intent. The priorities of the Trump Administration may instill such a focus on the DFC in the short term but, absent an explicit mandate, the DFC will be subject to the shifting political priorities going forward. If the Trump Administration and Congress want the DFC to counter China, it should make this objective explicit and mandatory.

Weakens Focus on Supporting U.S.-Owned Businesses. Currently, OPIC eligibility requires U.S. ownership or strong U.S. involvement. The BUILD Act, however, requires only that the DFC "give preferential consideration to projects sponsored by or involving private sector entities that are United States persons."[58] Regardless of the soundness of this policy, it should be noted that the de-emphasis of focus on U.S. businesses is at odds with the Trump Administration's stated desire for the new, consolidated development finance institution to "support U.S. companies, jobs, and exports."[59]

Fixing the BUILD Act

Supporters of the DFC have outlined different visions for the organization. Development advocates wish to create a supersized OPIC with a development focus. The Trump Administration wants to restructure existing development finance entities into a tool to advance U.S. foreign policy and national security interests in particular by countering China. Others, such as the U.S. Chamber of Commerce, see it as an instrument to provide taxpayer-subsidized services to benefit U.S. businesses and exporters.[60]

However, only one vision would be realized under the BUILD Act. The BUILD Act fits the first mission—development finance—that has been largely championed by groups such as the Center for Global Development, that strongly support an increase in the size and authority of a new development finance institution while making it less subject to the congressional oversight that accompanies an annual appropriations process to finance its activities and other scrutiny through regular reauthorization.

Sidelined is the foreign policy and national security focus advanced by the Trump Administration as necessary to counter Chinese influence, while the legislation would actually weaken existing requirements for OPIC to focus on U.S. businesses. To bring the proposal more in alignment with these purposes, Congress should amend the BUILD Act to:

- **Make explicit the mission to counter the influence of China.** If countering the Chinese Belt and Road Initiative or similar foreign activities is a core purpose of the new DFC, that mission needs to be included in the text of the legislation. Determining which investments by foreign countries need to be countered will require the U.S. to:

55. Benjamin Leo and Todd Moss, "Bringing U.S. Development Finance into the 21st Century: Proposal for a Self-Sustaining, Full-Service USDFC," Center for Global Development, March 2015, https://www.cgdev.org/sites/default/files/CGD-Rethinking-US-Development-Policy-Leo-Moss-Development-Finance-Corporation.pdf (accessed April 19, 2018).
56. President's Global Development Council, *Global Development Council Report: Beyond Business as Usual*, April 14, 2014, https://www.usaid.gov/sites/default/files/gdc_memo_for_the_president_final.pdf (accessed April 19, 2018).
57. Adva Saldinger, "Inside the Fight for OPIC Reauthorization," Devex, February 21, 2017, https://www.devex.com/news/inside-the-fight-for-opic-reauthorization-89612 (accessed April 19, 2018).
58. The Build Act, § 501(b)(1).
59. Office of Management and Budget, *Fiscal Year 2019: An American Budget*, p. 81.
60. See, for instance, U.S. Chamber of Commerce, "Letter on Fiscal Year 2017 State, Foreign Operations, and Related Programs Appropriations Bill," July 11, 2016, https://www.uschamber.com/letter/letter-fiscal-year-2017-state-foreign-operations-and-related-programs-appropriations-bill (accessed April 30, 2018), and Peter Bowe, "How a Little-Known Federal Agency Helps This Maryland Small Business Make It in the World Economy," U.S. Chamber of Commerce, November 17, 2016, https://www.uschamber.com/series/above-the-fold/how-little-known-federal-agency-helps-maryland-small-business-make-it-the (accessed April 30, 2018).

(1) clarify whether and how Chinese investments and other interventions are increasing their influence or advancing strategic objectives; and (2) develop an equally strategic response. Anecdotally, China has focused on major infrastructure projects at key geostrategic points around the world that are also of interest to China from a military perspective. Yet, in recent years, OPIC has focused on projects designed to finance niche development projects, encourage renewable energy, or subsidize loans to small and medium enterprises that OPIC has focused on in recent years. Thus, countering China would likely require a shift to focus on large infrastructure projects in low-income and lower-middle-income countries going forward. Moreover, it will likely require revision of the DFC's policy of working through "demand-driven partnerships with the private sector" toward a policy of encouraging the organization to solicit and specifically encourage U.S. private investment in projects and countries to counter Chinese influence.

- **Limit DFC projects to low-income and lower-middle-income countries.** U.S. government subsidies for U.S. investments might have made sense in an earlier era when private financial markets were smaller and less interested in developing-country investments, but changing investment patterns illustrate that they are increasingly unnecessary.[61] In particular, U.S. development finance or other development assistance should not be going to countries with their own foreign assistance and development finance programs who obviously have capacity to focus on development shortfalls in their own countries. If there is a genuine need for U.S. development finance, it is in countries that legitimately lack access to private capital markets. These countries are overwhelmingly unstable or are among the 84 countries categorized as low-income and lower-middle-income countries by the World Bank. In these limited circumstances, the U.S. interests could be served by encouraging private-sector investment through loans, loan guarantees, and political-risk insurance when private-sector options are unavailable. Even in these countries, however, DFC activities should prioritize those countries and projects that are of geostrategic interest to the United States. Projects in upper-middle-income countries that almost universally have access to private capital markets or have reasonably developed domestic financial markets, however, should be exceptional and require the DFC to provide an explicit foreign policy or national security justification of the project to Congress, receive affirmative support for it from the committees of jurisdiction, and be of limited scope and duration.

- **Require the DFC to encourage pro-market, pro-investment policies.** If the purpose of the DFC is truly to "help countries currently receiving United States assistance to graduate from their status as recipients of assistance," then these countries need to be encouraged to adopt policies that will lure private investment and facilitate market-led economic growth and development. In general, the U.S. has a broad foreign policy interest in promoting economic growth and development in developing countries that is best served by encouraging countries to adopt free-market policies that facilitate private-sector-led development. Currently, the BUILD Act states that it is "the sense of Congress that the Corporation should use the constraints analysis and other relevant data of the Millennium Challenge Corporation to be [sic] better inform the decisions of the Corporation with respect to providing support."[62] Functionally, this is a suggestion, not a mandate. Instead, absent an overriding foreign policy or national security justification, the DFC should require countries to implement these policies to remain eligible for DFC assistance—similar to the conditionality imposed by the MCC. Moreover, the DFC should be explicitly prohibited from engaging in equity investments, i.e., having a U.S. government agency be

61. Bryan Riley, Brett Schaefer, and James M. Roberts, "Congress Should Support the Trump Administration's Proposal to Close Down OPIC," Heritage Foundation *Issue Brief* No. 4735, July 14, 2017, https://www.heritage.org/markets-and-finance/report/congress-should-support-the-trump-administrations-proposal-close-down.

62. The BUILD Act, § 305.

part owner in private and state-owned enterprises, which is inherently contradictory to the overarching objective.

- **Reduce the contingent liability of the DFC to OPIC's current level, and subject the DFC to the normal appropriation and authorization process.** The Administration's proposal for a DFI seemingly intended to work within existing budgetary commitments to OPIC and the other activities to be consolidated. Even with a contingent liability of $60 billion as proposed in the BUILD Act, the DFC would lack the resources to compete dollar for dollar with the BRI, estimated to involve amounts well in excess of $1 trillion. The answer to countering BRI is not simply to dedicate more resources to the effort, but use existing resources more effectively and strategically. The BUILD Act doubles the size of the DFC (versus OPIC and the other current activities) and automates future growth. These measures insulate the DFC from congressional oversight. If the DFC proves effective, it will have no trouble drawing support for increased contingent liability, appropriations for operations, and reauthorization through the normal legislative process. However, even without additional resources, restricting the DFC (with rare exceptions) to lower-middle-income and low-income countries will free up resources because approximately 40 percent of OPIC's current financial commitments (nearly half if regional and multi-regional projects are excluded) involve projects in high-income an upper-middle-income countries.

The BUILD Act does have positive elements, including establishing an inspector general requiring a more comprehensive and user-friendly database, requiring more robust measures to ensure that projects are additional to rather than competitive with the private sector, and mandating regular reports to Congress. These changes would address inadequacies currently in place at OPIC. However, these improvements and the consolidation of disparate government development finance agencies and activities do not offset the serious flaws of the BUILD Act.

Conclusion

The Trump Administration has proposed consolidating existing development finance agencies to more effectively support U.S. foreign policy and security interests and counter the rising influence of China. Unfortunately, the BUILD Act legislation introduced in the House and Senate does not implement this vision. A new, limited, and carefully designed DFC could play a useful, albeit small, role in serving U.S. strategic interests and foreign policy goals in low-income and lower-middle-income developing countries. Similarly, the DFC could be a useful tool for targeted efforts to counter China, but only if such a mission is explicit in statute. Absent these changes, the BUILD Act will only result in a super-sized OPIC that, due to extended authorization and the ability to use fees and other resources to pay for its operations, is *less* subject to regular congressional oversight.

Congress and the Trump Administration should reject the BUILD Act and pursue alternative changes to existing U.S. development finance entities to support U.S. foreign policy and national security goals and the strategic mission to counter China.

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