ISSUE BRIEF

No. 4890 | JULY 24, 2018

House and Senate Revisions Have Not Improved the BUILD Act Enough to Warrant Conservative Support

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The Trump Administration has proposed a consolidation of existing development finance agencies, in order to provide more effective support for U.S. foreign policy objectives and security interests and to counter the rising influence of China. Heritage Foundation experts examined House and Senate legislation, both titled the Better Utilization of Investments Leading to Development Act (BUILD Act) of 2018, to act on this proposal by creating a new consolidated entity—the U.S. International Development Finance Corporation (USIDFC). Unfortunately, even after revision in committee mark-up, both the House and Senate versions of the BUILD Act retain major shortcomings that should lead conservatives to refrain from supporting them.[1]

Revised House Version of the "BUILD Act of 2018"

The House version of the BUILD Act, H.R. 5105, would consolidate the Overseas Private Investment Corporation (OPIC) and several development finance activities into the new USIDFC. Conservatives have long questioned the need for these government subsidies. As Milton Friedman said, "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."[2] 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."[3] The Republican Study Committee budget document for fiscal year 2017 opposed OPIC reauthorization based on long-standing criticism.

As originally drafted, the BUILD Act established a super-sized OPIC (the proposed USIDFC) which, due to its extended authorization and its ability to use fees and other resources to pay for its operations, would be less subject to regular congressional oversight. In response to criticism of the original bill,[4] an amended version was offered during committee mark-up that mitigated some of the concerns voiced by conservatives. In particular, the legislation now requires an annual appropriation from Congress in order for the new USIDFC to use fees to pay its expenses. On July 17, the House passed the amended Build Act by voice vote.

This is unfortunate because the amended text retains many of the original bill's flaws. In particular, the revised BUILD Act sets the initial contingent liability for the USIDFC at $60 billion—roughly double that of OPIC and the other consolidated activities under current law. Moreover, the BUILD Act would automatically adjust this contingent liability upward every five years at the percentage increase in the Consumer Price Index (CPI) with no additional congressional authorization required. In other words, if inflation trends remain steady, the USIDFC's contingent liability would automatically grow at a rate of between 10 percent and 15 percent every

This paper, in its entirety, can be found at
http://report.heritage.org/ib4890

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five years in perpetuity without any specific future authorization from Congress.

In addition, the new text continues to allow the USIDFC to make equity investments up to "35 percent of the Corporation's aggregate exposure."[5] In other words, a U.S. government corporation could in the near future hold ownership stakes in foreign companies totaling more than $20 billion. Moreover, while the new text removes a specific instruction for the USIDFC to "develop appropriate policies and guidelines" with regard to state-owned enterprises (SOE), it does not prohibit the USIDFC from supporting or investing in SOEs owned by foreign governments.

The BUILD Act states that it will be U.S. policy to "finance development in a way that builds and strengthens civic institutions, promotes competition, and provides for public accountability and transparency."[6] Unfortunately, the new USIDFC would send exactly the opposite signal each time the U.S. government invests in a private business or supports a foreign SOE.

Another potential concern for lawmakers is that the legislation, both original and revised, would weaken the focus on supporting U.S.-owned businesses. Currently, OPIC eligibility requires U.S. ownership or strong U.S. involvement. The revised House version of the BUILD Act, however, requires only that the USIDFC "give preferential consideration to projects sponsored by or involving private-sector entities that are United States persons."

Finally, the legislation does not require any specific focus on countering Chinese investment and influence. That explicit focus on China, which the BUILD Act's proponents have emphasized, is a primary reason why the Trump Administration and conservatives would consider supporting the legislation. The failure to narrow and focus the mission of the new USIDFC makes it likely that it will continue to support projects of marginal U.S. foreign policy and strategic interest, such as the 2018 loan-guarantee project for a Texas company to acquire 104 Starbucks stores and develop 45 additional stores in Brazil.[7]

Revised Senate Version of the "BUILD Act of 2018"

The Senate Foreign Relations Committee amended its version of the BUILD Act in a June 2018 markup.[8] As with the House bill, the amended text incorporated changes to address conservative criticism, starting with shortening the authorization to seven years versus 20 years in the previous version. Like the amended House bill, the Senate version (S. 2463) would now require an annual appropriation from Congress in order for the new USIDFC to use fees to pay its expenses. In addition, S. 2463 would require a presidential certification that USIDFC "support" in upper-middle-income countries furthers the "national economic or foreign policy interests of the United States."[9]

1 James M. Roberts and Brett D. Schaefer, "The BUILD Act's Proposed U.S. Development Finance Corporation Would Supersize OPIC, But Not Improve It," Heritage Foundation *Backgrounder* No. 3312, May 2, 2018, https://www.heritage.org/international-economies/report/the-build-acts-proposed-us-development-finance-corporation-would.

2 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 July 18, 2018).

3 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 July 18, 2018).

4 For instance, James M. Roberts and Brett D. Schaefer, "Amended BUILD Act Is a Cosmetic Makeover, Not Meaningful Reform," May 8, 2018, The Daily Signal, https://www.dailysignal.com/2018/05/08/amended-build-act-is-a-cosmetic-makeover-not-meaningful-reform/.

5 H.R. 5105, "Better Utilization of Investments Leading to Development Act of 2018 (BUILD Act of 2018)," Section 201(4)(B), p. 24, https://www.congress.gov/115/bills/hr5105/BILLS-115hr5105rh.pdf (accessed July 19, 2018).

6 H.R. 5105, "Better Utilization of Investments Leading to Development Act of 2018" or "BUILD Act of 2018," Section 101 (2), p. 6, https://www.congress.gov/115/bills/hr5105/BILLS-115hr5105rh.pdf (accessed July 19, 2018).

7 Overseas Private Investment Corporation, "Information Summary for the Public: Brazil," https://www.opic.gov/sites/default/files/files/9000052729.pdf (accessed July 23, 2018).

8 U.S. Senate Committee on Foreign Relations, Business Meeting, June 26, 2018, https://www.foreign.senate.gov/hearings/business-meeting-062618 (accessed July 16, 2018).

9 S. 2463, "Better Utilization of Investments Leading to Development Act of 2018" or "BUILD Act of 2018," Section 102(c)(2)(A), p. 84, https://www.congress.gov/115/bills/s2463/BILLS-115s2463rs.pdf (accessed July 19, 2018).

This is an improvement, although it would have been better if Section 102 of the revised Senate bill had been written such that the President had to certify that the USIDFC loans further the national security, foreign policy, and economic interests of the United States and also mandated that Congress be required to authorize each USIDFC activity in upper-middle-income countries based upon this justification. These countries generally have access to international financial markets and reasonably well developed financial markets. Thus, it makes sense that there be a strong foreign policy or national security justification for a U.S. government corporation to provide loans, guarantees, or other financial support in these countries.

The Senate bill explicitly establishes a preference for projects in countries that have demonstrated consistent support for economic policies that promote development of private enterprise. This welcome change mirrors an amendment made to the House bill. The relatively mild preference language, however, stands in stark contrast to the far stronger language in the bill concerning environmental impact. Under S. 2463, the USIDFC board would be prohibited from voting in favor of any project that "is likely to have significant adverse environmental or social impacts that are sensitive, diverse, or unprecedented" unless detailed impact assessments are conducted and made publicly available. In short, the environmental provisions are far stricter than those supportive of private enterprise.

The revised legislation also clarifies that one of the purposes of the new USIDFC is to "provide counties a robust alternative to state-directed investments by authoritarian governments and United States strategic competitors." That is apparently a reference to China, but China is never mentioned by name in the bill and countering competitors, such as China, is not a mandatory consideration in project approval. Thus, even though BUILD Act proponents argue that the new USIDFC should be awarded expanded resources from American taxpayers to compete globally with China, the language that is actually in the bill does not require such a focus.

The legislation also fails entirely to address several other key concerns. As with the House version, the amended Senate BUILD Act:

- **Sets the initial authorization for contingent liability at $60 billion**—more than double OPIC's current authority.

- **Maintains the authority of the USIDFC to engage in equity investments in foreign companies** up to 35 percent of the contingent liability of the corporation ($21 billion if the authorization is $60 billion), and does not prohibit equity investment in foreign SOEs.

- **Adopts a procedure to increase contingent liability automatically** (CPI inflation index) every five years without additional congressional approval.

In addition, the amended Senate version of the BUILD Act establishes a nine-member Development Advisory Council to be drawn from think tanks, nongovernmental organizations, and advocacy organizations to advise the USIDFC on meeting its development mandate. This appears designed to ensure that these organizations can work within the USIDFC to press it to focus on their priorities—perhaps putting them ahead of the foreign policy priorities of whoever is in the White House.

The Revised BUILD Act Still Falls Short

The BUILD Act does have some positive elements, including the establishment of an inspector general; the creation of a more comprehensive and user-friendly database than the one currently maintained by OPIC; and a mandate for regular reports to Congress. It also would require more robust measures to ensure that USIDFC projects are in addition to, rather than competitive with, the private sector.

Although these changes address some of OPIC's inadequacies, and would make some improvements and somewhat consolidate the current disparate government development finance agencies and activities, they do not offset the serious flaws of the BUILD Act—even after changes in committee mark-up. Conservatives should not lend their support to what is, in effect, a vehicle for a rebranded, super-sized OPIC.

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