



OFFICE OF INSPECTOR GENERAL
U.S. Agency for International Development

OPIC Lacks Policy and Procedures To Ensure Compliance With Annual Appropriations Requirements

AUDIT REPORT 9-OPC-19-005-P
July 9, 2019

1300 Pennsylvania Avenue NW • Washington, DC 20523
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MEMORANDUM

DATE: July 9, 2019

TO: Overseas Private Investment Corporation, Acting President and CEO, David Bohigian

FROM: Global and Strategic Audits Division, Director, Van Nguyen /s/

SUBJECT: OPIC Lacks Policy and Procedures To Ensure Compliance With Annual Appropriations Requirements (9-OPC-19-005-P)

This memorandum transmits the final report on our audit of OPIC's processes and procedures to ensure compliance with the fiscal year (FY) 2018 Consolidated Appropriations Act. Our audit objectives were to (1) assess OPIC's overall practices and controls to ensure compliance with requirements in the FY 2018 Consolidated Appropriations Act (Public Law 115-141) and (2) determine whether OPIC complied with select appropriations requirements. In finalizing the report, we considered your comments on the draft and included them in their entirety in appendix D.

The report contains three recommendations to strengthen the agency's internal controls for complying with annual appropriations. After reviewing the information you provided in response to the draft report, we consider all three resolved but open pending completion of planned activities.

For recommendations 1–3, please provide evidence of final action to OIGAuditTracking@usaid.gov.

We appreciate the assistance you and your staff extended to us during this audit.

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INTRODUCTION

The Overseas Private Investment Corporation (OPIC) was established to advance U.S. development assistance objectives by helping American businesses invest in emerging markets. As a U.S. development finance institution, OPIC offers various financial services to clients including political risk insurance, direct loans, investment guarantees, and investment funds. OPIC received \$79.2 million in appropriations from Congress in FY 2018 for administrative expenses to carry out its mission. In addition, the agency was authorized a cumulative outstanding limit, also called maximum contingent liability (MCL), of \$29 billion to carry out insurance and financing activities.¹ OPIC management is responsible for ensuring that the agency adheres to requirements set forth in the appropriation when using appropriated funds.² The agency must also adhere to other statutory requirements to which OPIC is bound, primarily the Foreign Assistance Act of 1961, as amended.

In October 2018, the passage of the Better Utilization of Investments Leading to Development Act of 2018 (the BUILD Act) established the U.S. International Development Finance Corporation (DFC), which will combine OPIC's existing operations with USAID's Development Credit Authority.³ DFC will have a substantially increased MCL of \$60 billion, which requires robust procedures and internal controls to ensure full compliance with annual appropriations.

We initiated this audit in August 2018 to respond to a request from the House of Representatives Appropriations Sub-Committee on State, Foreign Operations, and Related Programs. In a committee report accompanying the FY 2019 Appropriations Bill,⁴ the USAID Office of Inspector General (OIG) was requested to "...submit a report not later than 45 days after enactment of this Act on the policies, procedures, and processes that the Overseas Private Investment Corporation used to ensure compliance with the funding conditions and reporting requirements in Public Law 115-141 during fiscal year 2018."

Our objectives were to (1) assess OPIC's overall practices and controls to ensure compliance with requirements in the FY 2018 Consolidated Appropriations Act (Public Law 115-141) and (2) determine whether OPIC complied with select appropriations requirements. To answer the objectives, we conducted interviews with agency staff, reviewed related policies and procedures, and tested compliance with select requirements. Appendix A contains our full scope and methodology.

¹ This amount is specified in Sec. 235(a)(1) of the Foreign Assistance Act of 1961, as amended.

² U.S. Government Accountability Office (GAO), "Principles of Federal Appropriations Law," Fourth Edition, 2016.

³ The BUILD Act was enacted on October 5, 2018, as part of the Federal Aviation Administration Reauthorization Act of 2018 (Public Law 115-254).

⁴ House Report 115-829; accompanying H.R. 6385, State, Foreign Operations, and Related Programs Appropriations Bill, 2019.

SUMMARY

While OPIC had some practices and tools in place, the agency's approach to appropriations compliance lacked the level of documentation and formality needed to effectively ensure compliance with requirements. OPIC did not have a formal written policy describing assigned roles and responsibilities, procedural steps, and timelines to guide appropriations compliance efforts. In addition, we identified gaps in OPIC's annual appropriations review process, stemming from the lack of a documented, formalized approach. Gaps included the lack of a mechanism to share the results of the review with all relevant staff, insufficient detail in the tracking mechanism used to ensure compliance with appropriations, and omissions of applicable requirements to track. This is in contrast to Federal internal control standards that require management to document and implement policies and procedures to achieve the entity's objectives, which includes compliance with annual appropriations.

Weaknesses in OPIC's internal controls led to noncompliance with six of the seven requirements we tested. Instances of noncompliance included the absence of a required clause in project documents, late and incomplete submissions of required reports, failing to publically post certain information on its website, and not tracking or responding to a congressional notification requirement. Some of these issues arose from a pattern of disregard for requirements OPIC officials felt were either duplicative in nature or did not, in their judgment, specifically apply to the agency's operations. While OPIC considered steps to improve its appropriations compliance processes after initiation of this audit, senior officials thought that OPIC being a relatively small agency limited the need and ability to implement more robust appropriations compliance processes and procedures. Without addressing the internal control weaknesses that led to noncompliance, OPIC risks perpetuating these weaknesses as it transitions into the new agency.

We are making three recommendations to strengthen OPIC's internal controls for complying with appropriations requirements. Implementing these recommendations would also better position OPIC and its successor agency to ensure compliance with other applicable legislative requirements.

BACKGROUND

Annual appropriations bills originate from each of the House and Senate Appropriations Committees and their respective subcommittees. The appropriations process assumes the consideration of 12 regular appropriations measures annually. The House and Senate Appropriations Committees are both organized into 12 subcommittees, with each subcommittee having responsibility for developing one regular annual appropriations bill. In OPIC's case, the State, Foreign Operations, and Related Programs appropriations subcommittees in the House and Senate propose how and whether to provide funds for OPIC programs and activities and the other agencies in their jurisdiction. This process results in separate appropriations committee reports that

propose funding levels and guidelines for annual funding levels. Each committee report is then voted upon in the House and Senate. After any differences between the House and Senate reports have been resolved by a joint committee, an Explanatory Statement describing how the differences were reconciled is produced. Appropriations bills must be approved by Congress and presented to the President for signature.⁵

Once signed into law, the appropriations act is the authoritative guidance that OPIC must follow for each fiscal year's appropriation. OPIC also includes the two committee reports and the Explanatory Statement in its annual appropriations review process, and considers the conditions and restrictions in these documents in the same manner as enacted law. Therefore, for the purposes of evaluating OPIC's compliance with FY 2018 appropriations requirements in this audit, instances of the term "appropriation" throughout the report refers to all four documents: the FY 2018 Consolidated Appropriations Act (Public Law 115-141), its accompanying Senate and House reports, and the Explanatory Statement.

The recurring enactment of annual appropriations and continued application of the Foreign Assistance Act of 1961, as amended, have allowed OPIC to operate as an agency of the U.S. Government that helps American businesses invest in development in emerging markets and to advance U.S. foreign policy and national security priorities since its establishment in 1971.⁶ The agency is authorized to work in approximately 160 countries and does so in three main areas: (1) providing direct loans and loan guarantees for foreign projects, (2) providing political risk insurance to cover against losses resulting from currency inconvertibility, expropriation, regulatory risk, and other factors, and (3) providing support for investment funds in emerging markets that invest in new and expanding companies.

After nearly 50 years of continuous operation serving these priorities, OPIC is in a state of transition after the passage of the BUILD Act on October 5, 2018. This act established the framework for OPIC's successor institution, DFC, which according to OPIC officials could be operational as soon as October 1, 2019. DFC will absorb multiple USAID functions, primarily the Development Credit Authority, and will have an increased range of financing capabilities and a significantly increased lending threshold in its financing activities. DFC will likely have a requisite increase in staff and appropriation, as \$300 million for DFC was included in the President's FY 2020 budget request. With this increased responsibility, agency management will continue to be accountable to a range of stakeholders, including Congress, the U.S. and international business community, and U.S. taxpayers. The importance of establishing and maintaining appropriate accounting and internal controls to ensure compliance with enacted law, including its annual appropriation and founding statute, will be increased as OPIC transitions into its successor agency.

⁵ Congressional Research Service report, "The Congressional Appropriations Process: An Introduction," updated November 30, 2016.

⁶ The Foreign Assistance Act of 1961, Section 231, as amended, codified in Title 22 of the United States Code, Section 2191, describes OPIC's purpose as mobilizing and facilitating "the participation of U.S. private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies."

OPIC'S APPROACH LACKED THE FORMALITY AND DOCUMENTATION NECESSARY TO ADEQUATELY TRACK AND MANAGE APPROPRIATIONS REQUIREMENTS

Federal standards for internal control require management to establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives. Further, these standards require that management document policies and procedures that include the necessary details for employees to effectively implement its control activities. Clearly documenting the who, what, when, where, and why of the organization's internal control policies and procedures can assist in retaining organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel.⁷

OPIC had some practices and tools in place for complying with appropriations requirements. For example, the Office of Legal Affairs conducted an annual review to identify changes to appropriations requirements. It also had guidance for financial transactions that link to appropriations requirements, templates for congressional notifications and loan agreements, and other documents that employees use to carry out activities related to the requirements. However, OPIC did not have a formal written policy describing assigned roles and responsibilities, what steps will be taken, and timelines to follow to guide appropriations compliance efforts.

The primary mechanism OPIC used to track and manage appropriations compliance was an internal spreadsheet that catalogs requirements relevant to the agency. This approach placed heavy reliance on one individual in the Office of Legal Affairs who reads the appropriations act and accompanying reports each year and notes significant changes and new requirements. This individual then updates an internal SharePoint spreadsheet with the appropriations requirements deemed relevant to OPIC's operations. The office then uses the spreadsheet to document considerations, and in some cases steps to be taken to account for each requirement. While various staff and offices contributed to OPIC's efforts to comply with annual appropriations requirements, roles and responsibilities were not adequately documented to ensure their completion. Documenting and formalizing its controls related to appropriations compliance would help OPIC ensure continuity of these efforts when key staff change roles or leave the agency and promote a higher level of assurance for the agency's compliance with applicable laws.

We identified several gaps in OPIC's review and management of annual appropriations stemming from the lack of a documented, formalized approach. Issues included:

- *There was no mechanism for ensuring the tracking spreadsheet's contents were provided to all staff who share responsibility for meeting appropriations requirements.*

⁷ GAO, "Standards for Internal Control in the Federal Government," September 2014, principles 3 and 12.

When deemed appropriate by the Office of Legal Affairs, related guidance and reminders regarding requirements were emailed to staff in other offices. While we observed ad hoc instances of clarification provided for specific requirements, the results of this review were not formally disseminated to all affected offices within the organization.

- *OPIC's tracking spreadsheet lacked key details for congressional deliverables regarding the responsible office, components of required submissions, and dates due.*
Congressionally requested reports noted in the spreadsheet did not specify who was responsible for ensuring compliance and what actions would be taken. The spreadsheet did not include details like the dates reports are due, who is responsible for producing and submitting them, and whether the submission has been made. Additionally, some requirements were marked as applicable but were not completed, while one requirement was incorrectly labeled as not applicable to OPIC.
- *Some FY 2018 appropriations requirements were not captured during OPIC's review and were missing from the spreadsheet.*
We identified eight requirements applicable to OPIC in FY 2018 that were not included in its tracking spreadsheet (see appendix B). While OPIC reported controls are in place for some of these items in their budget and apportionment process, their exclusion from the tracker indicates a shortcoming in the documentation of its appropriations review process.

The lack of a formal, documented approach and the resulting gaps in OPIC's processes for reviewing and tracking annual appropriations requirements left the agency vulnerable to missing key congressional requirements and prevented it from having greater assurance of compliance with the requirements already identified.

LACK OF A FORMAL APPROACH LED TO NONCOMPLIANCE WITH KEY APPROPRIATIONS REQUIREMENTS

OPIC is required to account for and comply with requirements included in its appropriation. Our testing of seven appropriations requirements found multiple instances of noncompliance stemming from weak internal controls, differing legal opinions between OPIC and congressional staff, and a pattern of disregard for certain congressional requirements.

OPIC Did Not Comply With Some Key Appropriations Requirements

We conducted testing to determine the agency's compliance with seven FY 2018 appropriations requirements that we determined to be of importance to congressional stakeholders or would have broader adverse impact if noncompliance was identified (see table below). OPIC fully complied with one of the seven requirements tested—

related to documentation of anti-abortion provisions included in activities—and was noncompliant with the other six: documentation of anti-lobbying provisions included in activities, submission of quarterly financial unobligated balances reports, submission of an annual budgeted operating plan, submission of a quarterly financial confidential annex, public posting of required reports on its website, and congressional notification for assistance activities in Pakistan. The detailed results of testing are shown in the table below. Appendix C contains the full text of the seven requirements tested.

Summary of Compliance Testing for Selected Requirements

Requirement (Paraphrased)	Testing Results
1 Documentation of Anti-Abortion Provisions Included in Activities	Compliant: For the three projects reviewed, language prohibiting the use of appropriated funds for abortion and sterilization activities was properly included in the project documentation obtained during testing. According to OPIC, such language is purposefully included in the relevant project documents by OPIC attorneys during the project development phase for healthcare transactions, or those that could potentially have a healthcare nexus (e.g., funds invested in the public health sector, construction of buildings with an associated clinic) to address this appropriations requirement.
2 Documentation of Anti-Lobbying Provisions Included in Activities	Noncompliant: The language prohibiting the use of appropriated funds for lobbying activities was absent from the project documentation for one out of the three projects tested. The key documents reviewed for the noncompliant project were the common terms agreement (CTA), loan agreement, disbursement notes, and project application—none of which contained the required language. While a “Prohibited Payments” clause was included in the CTA, we deemed this language to be insufficient for the purposes of the anti-lobbying appropriations requirement. OPIC also noted the CTA was executed prior to the enactment of the appropriations bill in March 2018 and thus believed the required language was justifiably excluded from the project documentation. However, the same anti-lobbying provision applied in FY 2017 appropriations law in effect at that time. As such, we determined OPIC was not compliant for this project. For the two other projects tested, both of which were not formally initiated as of our testing date, the relevant anti-lobbying clauses were included in the draft versions of the project documentation.
3 Submission of Quarterly Financial Unobligated Balances Reports	Noncompliant: OPIC did not submit reports to the committee for quarters 1, 2, and 3 in FY 2018, as required.
4 Submission of Annual Budgeted Operating Plan	Noncompliant: OPIC did not submit this report until after its due date upon being prompted by the committee.
5 Submission of Quarterly Financial Confidential Annex	Noncompliant: OPIC made one cumulative submission for quarters 1, 2, and 3. However, it was submitted after the deadline of 30 days past the end of the third quarter. OPIC officials noted challenges in meeting this requirement for quarters 1 and 2 as the request for these reports was not received until March 2018. They also noted their activity partners, primarily the commercial banks that issue the loans associated with the guarantees issued by OPIC,

Requirement (Paraphrased)	Testing Results
	generally do not produce and submit the financial information necessary to create the report within 30 days, thereby preventing OPIC from meeting the deadline.
6 Public Posting of Required Reports on Website	Noncompliant: OPIC did not publically post quarterly financial reports, operating plans, or congressional notifications on its website, as required.
7 Congressional Notification Requirement for Assistance Activities in Pakistan (Sec. 7015(f))	Noncompliant: Although OPIC submitted a congressional notification for a selected activity in Pakistan, this was because the project partner was a nongovernmental organization, which triggered a separate notification requirement. OPIC does not track or respond to the country notification requirement because officials have concluded the agency does not render “assistance” to foreign countries for which they believe the requirement is specified. However, the Foreign Assistance Act of 1961, as amended, that established OPIC and which contains OPIC’s organic statute, describes OPIC as being engaged in the “conduct of assistance programs.” Based on this, we do not concur with OPIC’s view that this requirement does not apply to OPIC. We consider OPIC to be noncompliant with this requirement because the agency has no process in place to track and produce these notifications.

For some of the requirements that OPIC did not comply with, the agency did not provide documented outreach with congressional committees to obtain clarification on the nature and intent of the requirements. Further, OPIC did not sufficiently document management’s rationale and decision for not meeting the requirements. Failure to address these instances of noncompliance and their related controls puts OPIC and its successor agency at risk for future recurrence of these issues.

OPIC Exhibited a Pattern of Disregard for Applicable Appropriations Requirements

OPIC management is responsible for complying with appropriations requirements, to include obtaining timely clarification when their applicability is not clear. However, we identified instances where requirements were intentionally disregarded. While OPIC’s failure to submit congressional notifications for activities in Pakistan was due to the agency’s legal interpretation of the requirement, in other instances management disregarded requirements they acknowledged were legally applicable. These instances included:

- Submission of Quarterly Financial Unobligated Balances Reports.** While OPIC acknowledged the legal applicability of the appropriation requirement, the agency stated it was duplicative in nature and disregarded it. Agency officials said they produce similar reports in response to a separate Office of Management and Budget (OMB) requirement. Instead of providing financial reports to the committee as required, OPIC uploaded financial data to the OMB website. We attempted to

retrieve this data but found it was not readily available and lacked the information listed in the requirement.

- **Submission of Annual Budgeted Operating Plan.** This requirement describes an annual operating plan with line-item budget information for planned “programs” and “projects.” While OPIC officials acknowledged the legal applicability of submitting an operating plan, they said the language of this requirement was not written specifically for their activities. Officials emphasized the agency does not (1) receive appropriated funds at the “program” and “project” level and (2) have the functional capability to track and produce budget reports in such detail. In lieu of submitting an operating plan produced with internally available financial information, OPIC disregarded the requirement and did not produce a submission until prompted by the committee.
- **Public Posting of Required Reports on Website.** While OPIC acknowledged the applicability of this requirement, it did not publically post quarterly financial reports, operating plans, or congressional notifications due to the congressional committee on its website, as required. Agency officials believed the only congressional report requiring public disclosure was the quarterly financial unobligated balances report which they decided to disregard to avoid duplicating efforts in response to the separate OMB requirement.

Throughout the audit, OPIC senior officials stated that because OPIC is a relatively small agency, there was limited need and ability to implement more robust appropriations compliance processes and procedures. OPIC officials also emphasized that legal staff familiar with requirements are involved at various key stages of transactions and would be able to flag potential issues with appropriations compliance that arise.

Despite these statements, OPIC officials recently considered steps to strengthen the agency’s approach to appropriations compliance. As of July 2018, OPIC had proposed some initiatives related to the establishment of a compliance officer position, increased management emphasis regarding new operating requirements, and increased management and staff accountability in the form of specific measures related to appropriations compliance as part of the employee performance review process. However, none of these processes or initiatives had been formalized at the time of audit fieldwork. Failure to address the issues identified above would leave OPIC vulnerable to continued risks of noncompliance with future appropriations requirements. This would also raise questions as to whether OPIC—and its successor agency—would be well-positioned to meet requirements of other current and future statutory provisions.

CONCLUSION

OPIC plays a key role in U.S. foreign assistance by providing complex financial services in locations throughout the world. However, OPIC’s overall weak system of processes, procedures, and internal controls puts the agency at risk for noncompliance with appropriations requirements. These systematic issues are exacerbated by agency

management's disregard for applicable requirements and view of OPIC as a small agency that does not require robust controls. As OPIC prepares to transition into DFC by absorbing new staff and expanding operations, strong internal controls would position the new entity to comply with applicable laws going forward, beyond just annual appropriations requirements. While OPIC has considered steps to improve its processes, more action is needed to establish robust, documented internal controls and ensure these are properly implemented to ensure compliance. Taking steps now to address its lack of formal policies and instances of noncompliance with congressional requirements will help ensure that these issues do not persist as OPIC transitions into DFC.

RECOMMENDATIONS

To strengthen the agency's internal controls for complying with annual appropriations, we recommend that OPIC management:

1. Develop and implement a policy that documents and formalizes processes and procedures for ensuring compliance with appropriations requirements.
2. Develop and implement a formal system that includes sufficient detail to ensure timely identification, preparation, and submission of deliverables as required by appropriations law and related congressional reports.
3. Based on formal outreach to the House and Senate Committees on Appropriations, internally produce a written determination on the applicability of the following appropriations requirements reviewed in this report, along with any others that require clarification: (1) submission of quarterly financial unobligated balances reports; (2) submission of annual budgeted operating plan; (3) public posting of required reports on the agency website; and (4) congressional notification for assistance activities in Pakistan.

OIG RESPONSE TO AGENCY COMMENTS

We provided a draft of our report to OPIC on May 22, 2019, and on June 19, 2019, received its response, which is included as appendix D. OPIC concurred with all three of our recommendations and agreed to complete final action on the recommendations by August 1, 2019. After reviewing its response, we consider all three recommendations resolved but open until OPIC provides us sufficient documentation to verify these actions have been taken.

We appreciate OPIC's attention to our recommendations and look forward to receiving final documentation to verify that planned actions to address the recommendations have been taken. We will transfer any open recommendations to the Inspector General overseeing DFC when the new agency's Board of Directors appoints one.

APPENDIX A. SCOPE AND METHODOLOGY

We conducted our work from August 2018 through May 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit objectives were to (1) assess OPIC's overall practices and controls to ensure compliance with requirements in the FY 2018 Consolidated Appropriations Act (Public Law 115-141) and (2) determine whether OPIC complied with select appropriations requirements. These objectives were based on language in the House Appropriations Committee Report accompanying the proposed FY 2019 Department of State, Foreign Operations, and Related Programs Appropriations Bill. We met with staff members of the House Appropriations Subcommittee to better understand the nature of the request and specific areas of concern related to OPIC's appropriations compliance process.

To answer the first objective, we conducted interviews with key members of OPIC management and staff from offices with responsibilities related to the agency's appropriations compliance efforts. These offices included legal affairs, external affairs, and finance and portfolio management. We reviewed OPIC's policies and procedures to understand the extent to which management has standardized the agency's response to and compliance with annual appropriations. We also performed a detailed review of OPIC's FY 2018 appropriation included in the Consolidated Appropriations Act, the accompanying Explanatory Statement, and the related House and Senate reports. In doing so we identified a universe of 127 appropriations requirements relevant to OPIC.

In assessing OPIC's controls related to appropriations compliance, we reviewed documentation including the appropriations requirement tracking spreadsheet, guidance in place for financial transactions, a template used for submitting congressional notifications, a template used for financing agreements, and internal communications related to controls in place for appropriations requirements.

To answer the second audit objective and determine which requirements would be selected for detailed compliance testing of the effectiveness of OPIC controls, we designed a methodology based on areas of interest from the committee, level of risk identified by auditors related to the effects of noncompliance with appropriations, and relevance to the first audit objective. In selecting a limited sample for testing we also considered the time-sensitive nature of this congressionally requested audit. Based on those factors, we identified seven requirements⁸ to use as our sample:

1. Documentation of anti-abortion provisions included in activities
2. Documentation of anti-lobbying provisions included in activities

⁸ See appendix C for the full text of these requirements.

3. Submission of quarterly financial unobligated balances reports
4. Submission of annual budgeted operating plan
5. Submission of quarterly financial confidential annex
6. Public posting of required reports on website
7. Congressional notification requirement for assistance activities in Pakistan (Section 7015(f))

We then reviewed relevant documentation and interviewed key personnel to assess OPIC's compliance with each. For items 1 and 2, we determined compliance by evaluating whether controls like relevant clauses were included in program documents to account for spending restrictions. Procedures verifying whether the status and nature of activities in field locations were in compliance with appropriations requirements were outside the scope of this audit. For items 3, 4, 5, 6, and 7, we evaluated whether each item was completed on time and fulfilled the description included in each requirement. Due to the judgmental nature of our sample, our testing results cannot be projected to the entirety of OPIC's appropriations requirements.

Documentation we reviewed as part of our compliance testing included project applications, commitment letters, and loan agreements. We reviewed OPIC's operating plan and financial reports submitted to the committee, congressional notifications for activities, and OPIC's website and relevant reports that have been publicly posted. When we found discrepancies (such as missing entries and nonpopulated fields), we brought them to OPIC's attention and worked to correct the discrepancies before conducting our analyses. We then determined that the data were sufficiently reliable for the purposes of our audit.

APPENDIX B. APPROPRIATIONS REQUIREMENTS EXCLUDED FROM OPIC REVIEW

The full text of the eight appropriations requirements excluded from OPIC's tracker is included in the following table.

Selection	Requirement	Section	Language in FY 2018 Appropriations Act & Related Documents
1	Annual Appropriation for Administrative Expenses	Division K - Department of State, Foreign Operations, and Related Programs, Title VI, OPIC Section	The Overseas Private Investment Corporation is authorized to make, without regard to fiscal year limitations, as provided by section 9104 of title 31, United States Code, such expenditures and commitments within the limits of funds available to it and in accordance with law as may be necessary: <i>Provided</i> , That the amount available for administrative expenses to carry out the credit and insurance programs (see below for additional compliance item in parentheses) shall not exceed \$79,200,000.
2	Limitation on Use of Administrative Expenses for Reception and Representation Expenses	Division K - Department of State, Foreign Operations, and Related Programs, Title VI, OPIC Section	...including an amount for official reception and representation expenses which shall not exceed \$35,000...
3	Classification of Administrative Expenses	Division K - Department of State, Foreign Operations, and Related Programs, Title VI, OPIC Section	<i>Provided further</i> , That project-specific transaction costs, including direct and indirect costs incurred in claims settlements, and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 of the Foreign Assistance Act of 1961, shall not be considered administrative expenses for the purposes of this heading.
4	Program Account Appropriation	Division K - Department of State, Foreign Operations, and Related Programs, Title VI, OPIC Section	For the cost of direct and guaranteed loans as authorized by section 234 of the Foreign Assistance Act of 1961, \$20,000,000, to be derived by transfer from the Overseas Private Investment Corporation Noncredit Account, to remain available until September 30, 2020:

Selection	Requirement	Section	Language in FY 2018 Appropriations Act & Related Documents
5	Program Account Appropriation – Limitation by Fiscal Year	Division K - Department of State, Foreign Operations, and Related Programs, Title VI, OPIC Section	<i>Provided</i> , That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: <i>Provided further</i> , That funds so obligated in fiscal year 2018 remain available for disbursement through 2026; funds obligated in fiscal year 2019 remain available for disbursement through 2027; and funds obligated in fiscal year 2020 remain available for disbursement through 2028: <i>Provided further</i> , That notwithstanding any other provision of law, the Overseas Private Investment Corporation is authorized to undertake any program authorized by title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 in Iraq: <i>Provided further</i> , That funds made available pursuant to the authority of the previous proviso shall be subject to the regular notification procedures of the Committees on Appropriations.
6	Program Account Appropriation – Administrative Expenses	Division K - Department of State, Foreign Operations, and Related Programs, Title VI, OPIC Section	In addition, such sums as may be necessary for administrative expenses to carry out the credit program may be derived from amounts available for administrative expenses to carry out the credit and insurance programs in the Overseas Private Investment Corporation Noncredit Account and merged with said account.
7	Extraction of Natural Resources	Division K - Department of State, Foreign Operations, and Related Programs, Title VII, General Provisions, Sec. 7031(e)	(1) ASSISTANCE.—Funds appropriated by this Act shall be made available to promote and support transparency and accountability of expenditures and revenues related to the extraction of natural resources, including by strengthening implementation and monitoring of the Extractive Industries Transparency Initiative, implementing and enforcing section 8204 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 2052) and the amendments made by such section, and to prevent the sale of conflict diamonds, and provide technical assistance to promote independent audit mechanisms and support civil society participation in natural resource management.
8	Quarterly Confidential Annex Submission	Explanatory Statement, Title VI, OPIC ‘Program Account’	In lieu of the directive on monthly reports in the House report, OPIC shall submit the confidential annex on a quarterly basis for the current year to the Committees on Appropriations not later than 30 days after the end of each quarter, including the amounts of principal and subsidy obligated or deobligated by date and the remaining unobligated balances of resources and the statutory cap. This quarterly report is in addition to the annual confidential annex.

APPENDIX C. APPROPRIATIONS REQUIREMENTS TESTED

The full text of the seven appropriations requirements tested in our audit is included in the following table.

Selection	Requirement	Section	Language in FY 2018 Appropriations Act & Related Documents
1	Prohibition on Funding for Abortions and Involuntary Sterilization	Division K - Department of State, Foreign Operations, and Related Programs, Sec. 7018	None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for any biomedical research which relates in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions and involuntary sterilizations.
2	Anti-Lobbying Requirements	Division E - Financial Services and General Government Appropriations, Sec. 715	No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.
3	Unobligated Balances Report	Division K - Department of State, Foreign Operations, and Related Programs, Sec. 7002	Any department or agency of the United States Government to which funds are appropriated or otherwise made available by this Act shall provide to the Committees on Appropriations a quarterly accounting of cumulative unobligated balances and obligated, but unexpended, balances by program, project, and activity, and Treasury Account Fund Symbol of all funds received by such department or agency in fiscal year 2018 or any previous fiscal year, disaggregated by fiscal year: <i>Provided</i> , That the report required by this section shall be submitted not later than 30 days after the end of each fiscal quarter and should specify by account the amount of funds obligated pursuant to bilateral agreements which have not been further sub-obligated.

Selection	Requirement	Section	Language in FY 2018 Appropriations Act & Related Documents
4	Operating and Reorganization Plans	Division K - Department of State, Foreign Operations, and Related Programs, Sec. 7076(a)	<p>Not later than 45 days after the date of enactment of this Act, each department, agency, or organization funded in titles I, II, and VI of this Act, and the Department of the Treasury and Independent Agencies funded in title III of this Act, including the Inter-American Foundation and the United States African Development Foundation, shall submit to the Committees on Appropriations an operating plan for funds appropriated to such department, agency, or organization in such titles of this Act, or funds otherwise available for obligation in fiscal year 2018, that provides details of the uses of such funds at the program, project, and activity level: <i>Provided</i>, That such plans shall include, as applicable, a comparison between the congressional budget justification funding levels, the most recent congressional directives or approved funding levels, and the funding levels proposed by the department or agency; and a clear, concise, and informative description/justification: <i>Provided further</i>, That if such department, agency, or organization receives an additional amount under the same heading in title VIII of this Act, operating plans required by this subsection shall include consolidated information on all such funds: <i>Provided further</i>, That operating plans that include changes in levels of funding for programs, projects, and activities specified in the congressional budget justification, in this Act, or amounts specifically designated in the respective tables included in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act), as applicable, shall be subject to the notification and reprogramming requirements of section 7015 of this Act.</p>
5	Quarterly Confidential Annex Submission	Explanatory Statement, Title VI, OPIC 'Program Account'	<p>In lieu of the directive on monthly reports in the House report, OPIC shall submit the confidential annex on a quarterly basis for the current year to the Committees on Appropriations not later than 30 days after the end of each quarter, including the amounts of principal and subsidy obligated or deobligated by date and the remaining unobligated balances of resources and the statutory cap. This quarterly report is in addition to the annual confidential annex.</p>

Selection	Requirement	Section	Language in FY 2018 Appropriations Act & Related Documents
6	Public Posting of Reports	Division K - Department of State, Foreign Operations, and Related Programs, Sec. 7077(a)	<p>(1) REQUIREMENT.—Any agency receiving funds made available by this Act shall, subject to paragraphs (2) and (3), post on the publicly available Web site of such agency any report required by this Act to be submitted to the Committees on Appropriations, upon a determination by the head of such agency that to do so is in the national interest.</p> <p>(2) EXCEPTIONS.—Paragraph (1) shall not apply to a report if—</p> <p>(A) the public posting of such report would compromise national security, including the conduct of diplomacy; or</p> <p>(B) the report contains proprietary, privileged, or sensitive information.</p> <p>(3) TIMING AND INTENTION.—The head of the agency posting such report shall, unless otherwise provided for in this Act, do so only after such report has been made available to the Committees on Appropriations for not less than 45 days: <i>Provided</i>, That any report required by this Act to be submitted to the Committees on Appropriations shall include information from the submitting agency on whether such report will be publicly posted.</p> <p>(b) REQUESTS FOR DOCUMENTS.—None of the funds appropriated or made available pursuant to titles III through VI of this Act shall be available to a nongovernmental organization, including any contractor, which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the Department of State and the United States Agency for International Development.</p>
7	Country Notification Requirements	Division K - Department of State, Foreign Operations, and Related Programs, Sec. 7015(f)	None of the funds appropriated under titles III through VI of this Act may be obligated or expended for assistance for Afghanistan, Bahrain, Bolivia, Burma, Cambodia, Colombia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iran, Iraq, Lebanon, Libya, Mexico, Pakistan, Philippines, the Russian Federation, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Uzbekistan, Venezuela, Yemen, and Zimbabwe except as provided through the regular notification procedures of the Committees on Appropriations.

APPENDIX D. AGENCY COMMENTS

Date: June 19, 2019

To: Van Nguyen
Global and Strategic Audits Division, Director
Office of Inspector General
USAID

Subject: USAID OIG Report re Annual Appropriations Requirements (9-000-19-00X-P)

Thank you for providing OPIC an opportunity to review and respond to the draft audit report. As a preliminary matter, OPIC management appreciates that your review did not find any instances of noncompliance with respect to OPIC's core budgetary appropriation authorities. OPIC's apportionment and budgetary processes ensure effective control of the agency's financial expenditures, as evidenced by the results of OPIC's annual financial statement audits.

OPIC's exemplary track record of compliance with financial and budgetary appropriations requirements does not excuse the several instances of noncompliance identified in your draft report with respect to non-budgetary appropriation requirements—e.g., untimely reports to Congress and failure to post certain information on OPIC's website. OPIC management takes these matters seriously and agrees that the agency's compliance procedures in this regard should be updated and improved based on the findings in the audit. OPIC will seek to expeditiously implement the three recommendations made in your report to increase the agency's internal controls in this area. We appreciate you bringing these issues to our attention.

With that being said, OPIC management does not concur with several assertions of noncompliance set forth in the draft report. It appears that OPIC and OIG staff hold genuine differences of professional opinion about the requirements of the law in certain respects. See Appendix A (attached) at Sections II & IV. We appreciate and agree with your suggestion that OPIC should seek written clarification from the Appropriation Committees regarding which provisions are applicable to OPIC. This recommendation is especially timely considering the forthcoming transition to the U.S. International Development Finance Corporation which will involve an entirely new statutory construct regarding Congressional appropriations. OPIC intends to seek written clarification from the Committees as soon as possible and will conform its improved policies and procedures accordingly.

Finally, and most importantly, OPIC disagrees with statements in the draft report suggesting that OPIC intentionally disregards applicable appropriations requirements. OPIC management has never held the view that its status as a small agency excuses it from complying with applicable legal obligations. OPIC has worked closely with Appropriations Committees for many years to provide all requested information sought by the Committees to ensure reports are beneficial to Committee staff. In response to

the reporting and public-disclosure lapses identified in your draft report, OPIC management took immediate steps to bring the agency into compliance. Indeed, as noted in the draft report, OPIC management had begun to implement steps to ensure a more robust compliance regime prior to the commencement of the audit. OPIC remains committed to strengthening its processes and procedures—including the full and immediate implementation of the proposals in the report.

Thank you for the professionalism exhibited by OIG staff in this and past audits. The reports and findings of these audits will be provided to DFC's Inspector General as part of the new agency's effort to design and implement more robust compliance programs. We look forward to notifying your office of our success in implementing the recommendations of this audit. Our target completion date is August 1, 2019.

Please do not hesitate to reach out to OPIC management if you have any questions or would like to discuss further.

Sincerely,

/s/

David Bohigian
Acting President & CEO

APPENDIX

I. OPIC’s processes and procedures for compliance with core budgetary appropriation requirements are robust and sufficient.

OPIC management would emphasize at the outset that the draft report does not focus on OPIC’s compliance with core budgetary appropriations requirements—i.e., Administrative Expenses shall not exceed \$79,200,000; direct and indirect costs of loans issued by OPIC shall not exceed \$20,000,000; etc. Instead, the audit focuses on testing OPIC’s compliance with several non-budgetary appropriations requirements that are generally applicable to various agencies, including OPIC. OPIC’s compliance with core budget-authority requirements is robust and is not implicated by the review or recommendations set forth in the draft report.

With respect to the non-budgetary appropriations requirements, the draft report finds that OPIC’s approach to compliance generally lacked the level of documentation and formality needed to effectively ensure compliance. In particular, the draft report focuses extensively on the form and substance of OPIC’s SharePoint® spreadsheet that tracks applicable appropriations requirements relevant to OPIC’s operations. OPIC agrees that its compliance procedures with respect to these non-budgetary requirements, and the contents of the tracking spreadsheet in particular, should be updated and improved based on the findings in the audit. But criticism in the draft report that certain core budgetary appropriations requirements “were not captured” by the tracking spreadsheet misconstrues its purpose.

The purpose of the spreadsheet is to identify and comply with appropriations requirements that are above and beyond the core budgetary appropriations requirements set forth in OPIC’s annual appropriations. The tracking spreadsheet is not intended to capture these core financial budget authorities. Compliance with these budget authorities is monitored and controlled through apportionment and budgetary control procedures within OPIC’s Office of Finance and Portfolio Management. OPIC maintains that these financial controls are robust as evidenced by the exemplary results of OPIC’s independent financial statement audits every year.

II. The draft report did not identify any instances of appropriated funds being spent on prohibited activities.

Two of the specific appropriations requirements tested in the audit relate to provisions that prohibit the use of appropriated funds for certain activities—i.e., abortion funding and lobbying activities. The draft report did not find any instance in which OPIC funds were used in violation of these prohibitions. With respect to the anti-abortion provisions, the audit found that OPIC was compliant. *See* Summary of Compliance Testing No. 1. With respect to the anti-lobbying provision, the audit asserts that OPIC was noncompliant due to “the absence of a required clause in project documents” setting forth the anti-lobbying prohibition. *See Id.* at No. 2. OPIC does not agree with the draft report’s finding of noncompliance in this respect.

The anti-lobbying provision tested in the audit provides that “[n]o part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch [for lobbying activities].” A finding that OPIC was noncompliant with this provision would mean that appropriated funds were actually spent on prohibited lobbying activities. The audit did not make such a finding and OPIC is not aware of any instance of noncompliance in this regard.

OPIC affirmatively achieves compliance with the anti-lobbying provision by specifying appropriate uses of OPIC loan proceeds and receiving evidence of those uses prior to disbursing funds. Additionally, OPIC receives annual audited financial statements from private-sector parties to verify such compliance. Although OPIC will adopt the OIG’s recommendation to implement a more formalized and documented approach to compliance generally, OPIC does not agree with the OIG’s finding that OPIC failed to comply with this requirement by not including specific reference to the prohibition in certain contractual documents.

III. OPIC has complied with all appropriations reporting requirements tested in the audit.

The draft report identified certain instances in which OPIC did not provide timely reports to Congress or post timely notices on its website as required by the 2018 Consolidated Appropriations Act. OPIC is now in compliance with those requirements and will immediately implement measures to ensure timely compliance going forward.

Item No.	OIG Testing Results (Summarized)	OPIC Response
3	OPIC did not submit quarterly financial unobligated balances reports for quarters 1, 2, and 3 of FY 2018, as required	In the past, OPIC provided responses consistent with guidance contained in OMB Circular No. A-11. Since Q3 FY18, OPIC has provided reports responding to the appropriator’s specific requirements. The fourth quarter report was submitted on October 31, 2018 as part of the financial confidential annex.
4	OPIC did not submit annual budgeted operating plan to committee until after its due date and prompting by committee	OPIC submitted the operating plans for FY18 and FY19 to the House Appropriations Committee on October 1, 2018.
5	OPIC made one cumulative submission of quarters 1, 2, and 3 of its quarterly financial confidential annex after the deadline	Quarters 1, 2, and 3 of the quarterly financial confidential annex were submitted on August 6, 2018, and the fourth quarter annex was submitted on October 31, 2018.
6	OPIC did not publicly post all non-exempt Congressional reports on its website www.opic.gov .	All non-exempt Congressional reports from FY 18 and FY 19 are now publicly available on OPIC’s website www.opic.gov .

IV. OPIC will consult with appropriations staff and formally document interpretations regarding compliance with certain appropriations requirements.

The draft report asserts that OPIC failed to comply with a Congressional Notification requirement for funds appropriated for “assistance” to Pakistan, notwithstanding that OPIC did in fact submit a notification to Congress for the Pakistan project in question pursuant to a separate notification requirement. *See* Summary of Compliance Testing No. 7.

The OIG is correct that OPIC has not historically viewed Sec. 7015(f)—requiring Congressional notification before “funds appropriated [pursuant to this Act] may be obligated or expended for assistance for [certain countries including Pakistan]”—as applicable to OPIC’s operations. OPIC does not obligate or expend appropriated funds to provide “assistance” to foreign countries, but instead provides loans, loan guarantees and political risk insurance to eligible private-sector partners to support investments in those countries. Accordingly, OPIC has not historically provided Congressional notification for such projects pursuant to this requirement. OPIC will reach out to the relevant Congressional Committees to clarify and document the mutual understanding of this statutory interpretation going forward and will revise its policies and procedures accordingly.

The draft report also identified a question relating to whether OPIC was required to submit “an annual operating plan with line-item budget information for planned ‘programs’ and ‘projects.’” OPIC maintains that this appropriations requirement is not applicable to OPIC because the agency does not receive appropriated funds at the “program” or “project” level. As noted above, OPIC has otherwise complied with this appropriation requirement, but will reach out to Congressional Committees to clarify and document this statutory interpretation going forward, and will revise its policies and procedures accordingly.

APPENDIX E. MAJOR CONTRIBUTORS TO THIS REPORT

The following people were major contributors to this report: Van Nguyen, audit director; John Slattery, auditor; Tifani Dyson, program analyst; Jack Nelson, auditor; Laura Pirocanac, writer-editor; and John Umana, attorney advisor.