

SECURING ACCOUNTABILITY AT OPIC



A **Citizen's Guide** to the Accountability
Mechanism at the Overseas
Private Investment Corporation



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Foreword

Purpose and Use of the Citizen's Guide

The Citizen's Guide to the Accountability Mechanism of the Overseas Private Investment Corporation (OPIC) is designed to help give local communities affected by OPIC-supported projects a voice in the development process. The OPIC Board of Directors created the Accountability Mechanism in 2004 as part of a broader Accountability and Advisory Mechanism (AAM). The Accountability Mechanism receives from local communities complaints relating to environmental, social, human rights, and labor impacts of OPIC-supported projects. This Guide simplifies the complaint process by gathering in one place all information needed to file a complaint relating to these impacts.

Roadmap to the Guide

First, the Guide provides a brief overview of what OPIC does and how the Accountability Mechanism works. Next, the Guide lays out, step-by-step, all of the necessary parts of a complaint to the Mechanism. The Guide explains the two types of complaints – Compliance Review complaints and Problem-Solving complaints – and provides practical tips for putting together a compelling and effective complaint. Additionally, the Guide gives you an idea of outcomes that may be expected from a complaint and how to best manage the complaint process.

The bulk of the Guide breaks down the relevant environmental, human rights, labor, and information disclosure laws, policies, and procedures OPIC must comply with when supporting development projects. The Chart of Standards provides this information in an easy-to-use topical fashion that makes it simple to match the facts of your case with the relevant rules the OPIC project may have broken. Lastly, the Appendix supplies you with useful tools, such as checklists and complaint outlines, to help you successfully use the Accountability Mechanism.

Part I – OPIC and its Accountability Mechanism

What is OPIC?

OPIC, the Overseas Private Investment Corporation, is an agency of the U.S. government. The U.S. Congress created OPIC in 1971 to help U.S. businesses invest in foreign countries, to support U.S. foreign policy, and to help insure against the social and political risks associated with foreign direct investment in developing countries. Currently, OPIC supports projects in more than 150 countries across the world.

OPIC is managed at the executive level by a President/CEO and a 15-member Board of Directors, all of whom are nominated by the President of the United States and approved by the U.S. Senate. The agency provides three main types of financial support to private U.S. businesses interested in investing in projects overseas: Financing, Insurance, and Investment Funds.

Financing

OPIC is authorized to provide direct loans and loan guaranties to investment projects in developing countries. Direct loans may be made only for projects that are sponsored by or significantly involve U.S. small businesses or cooperatives. By contrast, loan guaranties may be provided to any project, and are typically used for larger projects. Often, OPIC will work with other lending entities, such as banks, in providing a package of financing for a particular project. OPIC may provide loans as small as \$100,000, and may normally guaranty or lend up to \$250,000,000 per project. All loans or guaranties over \$30 million and all projects likely to have a significant adverse impact on the environment must be approved by the OPIC Board of Directors.

Insurance

OPIC is authorized to provide project investors with investment insurance to protect them against direct loss due to war or civil strife, actions by a foreign government, and inability to convert U.S. dollars into other currencies. OPIC insurance may also cover loss due to business interruption caused by any of these risks.

Investment Funds

OPIC provides financial support for privately owned and managed investment funds that operate in developing countries. These investment funds, in turn, make investments in projects conducted by companies in developing countries.

OPIC's Accountability Mechanism

The OPIC Accountability Mechanism

In response to guidance from the U.S. Congress, OPIC's Board of Directors established the Accountability Mechanism in 2004 to evaluate and report on OPIC compliance with "environmental, social, labor, and human rights" standards, as well as provide a forum for addressing the concerns of locally affected communities regarding specific OPIC-supported projects. It is OPIC's stated goal that the Accountability Mechanism be transparent and fair to all stakeholders and accessible and responsive to the concerns of locally impacted communities.

The Accountability Mechanism is housed within OPIC's Office of Accountability, an office reporting directly to OPIC's President and invited to report to the OPIC Board of Directors at regularly scheduled Board meetings. The Director, currently Dr. Jean Aden, receives and makes initial assessments of all Accountability Mechanism complaints, coordinates investigations that may be required, tries to resolve complaints, draws conclusions and makes recommendations to the President regarding OPIC compliance or future steps to resolve a conflict.

Two types of Accountability Mechanism complaint methods are available for affected communities: **Compliance Review** and **Problem-Solving**. Please see the next page for a description of each and specific instructions for filing these complaints.

How to File a Complaint

General Information

OPIC must comply with an array of environmental, human rights, and information disclosure laws. If an OPIC project has harmed your community, or if you believe OPIC is not following the rules, you may do something about it.

OPIC's Accountability Mechanism has two mechanisms for complaints:

- **Compliance Review**, and
- **Problem-Solving**

Compliance Review: To initiate the Compliance Review process, you must allege that OPIC is not complying with applicable statutes, rules, policies and procedures. If the Office of Accountability accepts the complaint, it will conduct an investigation, determine whether the OPIC-supported project is in compliance or not, and develop a report and recommendations that are submitted to the President.

Problem-Solving: Unlike the Compliance Review mechanism, persons making a Problem-Solving complaint are not required to allege non-compliance with applicable statutes, rules, policies, and procedures (although the complainant may do so, if they so choose). If a Problem-Solving complaint is accepted, the Office of Accountability will conduct a preliminary investigation and a problem-solving consultation, which may include dialogue, mediation, or further investigation. Additionally, the Office of Accountability may terminate the Problem-Solving process at any time if, after consultation, it is clear that the process is unlikely to produce positive results.

How to File a Complaint

General

The following information applies to both the **Compliance Review** and **Problem-Solving** mechanisms.

Time Frame Limitations

You may file a complaint only while OPIC is currently supporting a project.

Definition of “support”: OPIC support of a project will be deemed to have begun once OPIC has made a threshold decision to support a project. For Problem-Solving, OPIC support commences when a commitment letter is issued or insurance contract is signed. For Compliance Review, OPIC support begins when OPIC executes a financial agreement or an insurance contract is signed.

OPIC support is deemed to end at the termination of OPIC’s contractual relationship with a project. In the case of a financial intermediary, support ends when the intermediary is no longer contractually engaged in the project. You may email OPIC at foia@opic.gov or info@opic.gov to ask whether the project in your community is still being supported by OPIC.

Who May File

Local community members from communities impacted by OPIC-supported projects may make complaints to the Accountability Mechanism, as may their authorized representatives. However, the following definitions and restrictions apply:

Local community – any individual, group, community, entity, or other party affected or likely to be affected by an OPIC-supported project in the country where the project is located.

Local Authorized Representatives – the local community may be represented by local representatives where the representatives clearly identify the people they represent and provide OPIC with explicit evidence of their representative authority.

Non-Local Authorized Representatives - The local community may be represented by non-local representatives where there is clear evidence that no adequate or appropriate representation exists in the country where the project is located.

How to File a Complaint

General

Project Sponsor - the entity investing in the project that OPIC is supporting with financing or insurance may file a *Problem-Solving* complaint.

Confidentiality

Local community members may request that their identities be kept confidential if they are concerned about identity disclosure. However, the anonymous complaints cannot be accepted. Complainants must include identity information in the complaint, but may ask for confidentiality at the time the complaint is filed. A reason for the confidentiality request must be provided with the complaint.

Excluded Complaints

- Claims that do not involve OPIC's responsibilities;
- Claims raising issues already decided in previous claims;
- Claims relating to procurement decisions or selection of consultants;
- Claims meant primarily to harass a business competitor or to otherwise gain competitive advantage;
- Claims that appear to raise criminal wrongdoing;
- Claims based on allegations that the existing policy framework is inadequate; and
- Claims made prior to or after OPIC's support of a project.

Contact Information

All complaints should be in writing. If you fax or e-mail your complaint, you must still send an original copy with original signatures by mail to:

Dr. Jean Aden
Director, Office of Accountability
Overseas Private Investment Corporation
1100 New York Ave., NW
Washington D.C., 20527

Additional Contact Information:

Phone: 1-202-336-8400

Fax: 1-202-408-9859

Email: accountability@opic.gov

Website: www.opic.gov

How to File a Complaint

Compliance Review

Making a Compliance Review Complaint

The Compliance Review function provides a forum to investigate and report on complaints regarding OPIC's compliance with its governing statutes, rules, policies, and procedures. Compliance Review complaints must be in the context of specific OPIC-supported projects.

The following chart contains information and requirements specific to the Compliance Review process.

<p>You are eligible to file a Compliance Review complaint if you are:</p>	<ul style="list-style-type: none"> • A member of a local community who is, or is likely to be, affected by an OPIC-supported project. (Note: OPIC will keep your identity confidential if you request confidentiality and provide a reason for the request.) • An authorized representative of a local community affected by an OPIC project. • A member of OPIC's management and/or Board.
<p>The Compliance Review complaint must:</p>	<ul style="list-style-type: none"> • Relate to a project for which OPIC has executed a financial agreement or insurance contract, and for which OPIC maintains a current contractual relationship. • Be written in native language of the person who filed the complaint OR in English.
<p>List of important information to include in the Compliance Review complaint:</p>	<p><u>If filed by one or more local community members:</u></p> <ul style="list-style-type: none"> ○ Basic information: <ul style="list-style-type: none"> ▪ Names of community member(s). ▪ Contact information for community member(s). ▪ A statement telling OPIC whether or not the community member(s) want their names (and/or any other information) kept confidential. ▪ If confidentiality is requested, give a reason for the request. ○ Project information, including: <ul style="list-style-type: none"> ▪ The nature of the project at issue. ▪ The location of the project. ▪ The identity of the project sponsor (the company or entity investing in the project). ▪ A statement that the project is currently supported by OPIC. ○ Statement of Impact: A statement explicitly explaining the negative effects the project is currently having on the community, and/or the negative effects the project will likely cause in the future <ul style="list-style-type: none"> ▪ Negative effects may be related to the environment, human rights, worker rights, social issues, or other issues. ○ <u>Optional (but strongly encouraged):</u> Identify OPIC statutes, policies, guidelines or procedures that OPIC has not followed correctly. See Parts II and III for relevant regulations. <p><i>Continued on next page...</i></p>

How to File a Complaint

Compliance Review

<p>List of important information to include in the Compliance Review complaint (continued):</p>	<p><u>If filed by an authorized representative of the community</u></p> <ul style="list-style-type: none"> ○ Include the above information, AND: <ul style="list-style-type: none"> ▪ Name of authorized representative. ▪ Contact information for representative. ▪ Clear identification of the people for whom the complaint is made. ▪ Explicit evidence showing the representative has the authority to make a complaint (credentials, etc.). <p><u>Note:</u> A non-local authorized representative may file a complaint <u>only</u> when there is clear evidence that no adequate or appropriate representation exists in the country where the project is located.</p>
<p>After a Compliance Review complaint is filed...</p>	<ol style="list-style-type: none"> 1. The Office of Accountability (OA) registers and acknowledges the complaint. 2. The OA Director assesses the eligibility of the complaint, decides whether to accept or reject the complaint, and notifies the complainant and relevant parties of the decision. 3. If the complaint is accepted, the OA conducts a preliminary investigation, asking relevant OPIC management for comment and additional relevant information. 4. The OA examines whether OPIC has complied with relevant policies in the course of design or implementation of the OPIC-supported project, and creates a report. 5. The draft report is circulated for factual review and comments. (Responsive comments are submitted in writing within 15 working days.) 6. The OA reports results of the compliance audit to the President and CEO, notifies the complainant of the results of the compliance audit, and makes the report conclusions public on OPIC's website. 7. According to the OA website, the OA will perform post-report monitoring.

Additional Resources: See pg. 49 for a sample Complaint Outline, and pg. 52 for a Compliance Review complaint checklist.

How to File a Complaint

Problem-Solving

Making a Problem-Solving Complaint

The Problem-Solving function attempts to resolve outstanding complaints from local communities relating to the impacts of OPIC-supported projects on these communities, with or without allegations of OPIC non-compliance.

The important distinguishing feature between a Compliance Review and Problem-Solving is that Compliance Review complaints must involve allegations of non-compliance with laws, policies, or procedures, and a Problem-Solving complaint does not have to include allegations of non-compliance. Problem-Solving complaints MAY include allegations of non-compliance, but are NOT required to include such allegations.

Problem-Solving complaints must be in the context of a specific OPIC-supported projects. The following chart contains information and requirements specific to the Problem-Solving process.

You are eligible to file a Problem-Solving complaint if you are:	<ul style="list-style-type: none"> • A member of a local community who is, or is likely to be, impacted by an OPIC-supported project. (Note: OPIC will keep your identity confidential if you request confidentiality and provide a reason for the request.) • An authorized representative of a community affected by an OPIC project. • The project sponsor.
Before you may initiate a Problem-Solving Complaint, you must:	<ul style="list-style-type: none"> • Have made good faith efforts to bring the problem to OPIC's attention and/or to the attention of the sponsor or local community. • The complainant will need to show that s/he has worked with OPIC and/or the project sponsor or local community to try to address the problem.
The Problem-Solving Complaint must:	<ul style="list-style-type: none"> • Relate to a project for which OPIC has executed a financial agreement or insurance contract, and for which OPIC maintains a current contractual relationship. • Be written in native language of the person who filed the complaint OR in English

Continued on next page...

How to File a Complaint

Problem-Solving

<p>List of important information to include in the Problem-Solving complaint:</p>	<p><u>If filed by one or more local community members:</u></p> <ul style="list-style-type: none"> ○ Basic information: <ul style="list-style-type: none"> ▪ Names of community member(s). ▪ Contact information for community member(s). ▪ A statement telling OPIC whether or not the community member(s) want their names (and/or any other information) kept confidential. ▪ If confidentiality is requested, give a reason for the request. ○ Project information, including: <ul style="list-style-type: none"> ▪ The nature of the project at issue. ▪ The location of the project. ▪ The identity of the project sponsor (the company or entity investing in the project). ▪ A statement that the project is currently supported by OPIC. ○ Statement of Impact: A statement explicitly explaining the negative effects the project is currently having on the community, and/or the negative effects the project will likely cause in the future. (Negative effects may be related to the environment, human rights, worker rights, social issues, or other issues.) ○ Resolution Efforts: <ul style="list-style-type: none"> ▪ A succinct statement of efforts to resolve the problem, including <ul style="list-style-type: none"> • The identity of the parties involved in the efforts; • The relevant dates/times of these efforts; • Any contact with the sponsor, OPIC or the U.S. government. ▪ A precise statement of how the complainants would like to see the problem resolved. ▪ Any other relevant facts--attach any supporting documents or relevant materials. <p><u>If filed by an authorized representative of the community</u></p> <ul style="list-style-type: none"> ○ Include the above information, AND: <ul style="list-style-type: none"> ▪ Name of authorized representative; ▪ Contact information for representative; ▪ Clear identification of the people for whom the complaint is made; ▪ Explicit evidence showing the representative has the authority to make a complaint (credentials, etc.). <p><u>Note:</u> A non-local authorized representative may file a complaint <u>only</u> when there is clear evidence that there is no adequate or appropriate representation in the country where the project is located.</p> <p style="text-align: right;"><i>Continued on next page...</i></p>
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How to File a Complaint

Problem-Solving

<p>After a Problem-Solving complaint is filed:</p>	<ol style="list-style-type: none"> 1. The Office of Accountability (OA) registers and acknowledges the complaint. 2. The OA Director assesses the eligibility of the complaint and notifies the complainant of acceptance or rejection of the complaint. 3. If the complaint is accepted, the OA conducts a preliminary investigation, including requesting OPIC management to provide pertinent information. 4. The OA conducts a problem-solving consultation, which may include dialogue, mediation or further investigation. 5. The OA Director reports the results to OPIC's President and CEO, and notifies the complainant and project personnel of the results, and makes conclusions public. 6. Lastly, OA monitors any changes made in response to the problem-solving initiative. <p><u>Note:</u> The OA Director may terminate the process at any time if it is clear that it is unlikely to produce positive results.</p>
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Additional Resources: See pg. 49 for a sample Complaint Outline, and pg. 53 for a Problem-Solving complaint checklist.

How to File a Complaint (for Problem-Solving or Compliance Review)

Tips

Tips for Drafting the Complaint

- Be as specific and thorough as possible.
- Include as much information and evidence as possible.
- Try to cite all of the laws, policies, and procedures you believe have not been followed, and try to give supporting evidence for each alleged violation.
- Try to obtain the financial agreement between OPIC and the project sponsor to determine if any of the contract provisions have been breached (see pg. 38) and include any potential breaches in the complaint.
- Thoroughly explain why the project hurts the community and give specific examples; tell a compelling story--
 - Include quotes from affected local community members;
 - Include specific information about who has suffered impacts (i.e., women, children, elderly, or sick persons);
 - Explain any economic or property impacts, such as impacts on jobs or homes.
- If you have photographs, diagrams, or maps available, include them.
- If you have made previous attempts to contact OPIC about negative project impacts (note: good faith efforts to bring the problem to OPIC's attention and/or to the attention of the sponsor must be made before filing a problem-solving request – this is not a requirement for compliance review requests), include a description of your attempts to communicate and the responses you received; keep written copies of all correspondence or written summaries of all meetings or telephone conversations to create a record of communication about the complaint.
- Explain how you and the local community would like to resolve the various issues and problems.
- Identify the highest-priority issues related to your project for your community and explain why the high-priority problems need to be resolved quickly.
- Consider enlisting help with writing the complaint from local or international NGOs or other impacted communities.

What to Expect from the Complaint Process

The entire Accountability Mechanism process has no set time frame, and, to date, no complaint has gone through the complete complaint process. It is, therefore, impossible to predict when complaints will reach the final stages or what outcomes may be expected.

It is known, however, that the three initial steps of the complaint process have historically happened within a month. For example, the sole Problem-Solving complaint (regarding Pakistan DG Khan Cement) was filed with OPIC on November 14, 2005, and acknowledged two days later, on November 16th. The complaint was officially rendered ineligible on December 9, 2005, due to a court case that precluded acceptance.

The sole Compliance Review complaint, filed by a Georgian citizen and Green Alternative, a Georgian NGO, regarding the controversial Baku-Tblisi-Ceyhan (BTC) oil pipeline spanning Azerbaijan, Georgia, and Turkey, was filed by OPIC on May 18, 2006 and was both acknowledged and determined to be eligible four days later, on May 22. Office of Accountability issued a draft compliance review report on December 14, 2006, and submitted the final compliance review report to OPIC's President and CEO on January 29, 2007. The final report was sent to the parties and posted on Office of Accountability's webpage by February 12, 2007.

A public registry for Accountability Mechanism complaints is available online at <http://www.opic.gov/doingbusiness/accountability/registry/index.asp>. The registry allows you to track the progress of complaints through the Accountability Mechanism process. Do not hesitate to contact OPIC officials to ask about the status of the complaint or to offer additional evidence.

Potential Outcomes

It is important to note that there is no guarantee that filing a complaint will automatically produce desirable remedies. Still, a well-supported and thorough complaint has a better chance of producing positive outcomes. Additionally, although it is hard to predict outcomes to expect from the OPIC Accountability Mechanism, judging from other international financial institution Accountability Mechanism processes you might expect that concerns raised in the complaint will, at least initially, receive increased attention and awareness. However, if activities proposed in response to the complaint are not monitored, real results may be difficult to secure.

PART II – The Laws, Policies, and Procedures OPIC Must Follow

Introduction and Guide to Relevant U.S. Law

OPIC is a U.S. government agency, and it is bound by its authorizing statutes, including the laws incorporated by reference in these statutes, and federal regulations adopted by the agency. Additionally, OPIC is bound by other statutes and sources of law that apply to U.S. government agencies. Finally, OPIC must comply with international law, guidelines promulgated by the World Bank Group, including the social and environmental safeguard policies of the International Finance Corporation, and the laws of any country hosting an OPIC project.

According to the July 2004 OPIC Board Resolution creating the OPIC Accountability Mechanism¹, the Compliance Review mechanism is aimed at ensuring OPIC has complied with **applicable statutes, rules, policies, and procedures** within the scope of OPIC's statutory mandate. The Problem-Solving mechanism is aimed at ensuring local communities have a forum for resolving concerns regarding environmental, social, labor and human rights impacts of OPIC-supported projects on local communities, "with or without allegations of noncompliance on the part of OPIC." References to discrete statutes, rules, policies or procedures are not required for problem-solving requests, but may be included.

Thus, Parts II and III of the Citizen's Guide lay out the applicable statutes, rules, policies and procedures with which OPIC must comply. These sources of authority include, but are not limited to:

- **The Foreign Assistance Act (FAA)** (OPIC's authorizing statute)²
- **The Freedom of Information Act (FOIA)**³
 - **The Code of Federal Regulations (CFR)**⁴
- **Presidential Executive Orders**⁵
- **OPIC Policies and Procedures**⁶

¹ 2004 OPIC Accountability Mechanism Board Resolution (BDR(04)33)
<http://www.opic.gov/pubs/foia/resolutions/2004BDR/BDR-04-33.pdf>

² The Foreign Assistance act is located within the United States Code, which is searchable for free on the following Internet sites: Government Printing Office, <http://www.gpoaccess.gov/uscode/index.html>, and Cornell University Law School, <http://www.law.cornell.edu/uscode/>. The Foreign Assistance Act is available as a PDF document at the U.S. Agency for International Development Website <http://www.usaid.gov/policy/ads/faa.pdf>.

³ The text of the Freedom of Information Act (FOIA) is available at any of the above United States Code websites, as well as the U.S. Department of State Website, <http://foia.state.gov/foia.asp>.

⁴ The Code of Federal Regulations (CFR) is available at the Government Printing Office website, <http://www.gpoaccess.gov/cfr/index.html>.

⁵ Presidential Executive Orders are available at the Federation of American Scientists website, <http://www.fas.org/irp/offdocs/eo/index.html>.

⁶ See, e.g., 2004 OPIC Environmental Handbook, http://www.opic.gov/doingbusiness/investment/environment/documents/opic_env_handbook.pdf, OPIC website FOIA pages (implementing federal FOIA requirements) <http://www.opic.gov/pubs/foia/index.asp>.

PART II – The Laws, Policies, and Procedures OPIC Must Follow

- **International and Foreign Laws and Guidelines**
 - **International Treaties**
 - **Host Country laws**

CHART OF STANDARDS

Below are the environmental, human rights, worker rights, and information disclosure standards OPIC must meet. It is your right to file a complaint if you believe OPIC is failing to meet these standards and you may be or are adversely impacted by an OPIC project. Except where otherwise noted (e.g., “Explainer”, Note, etc.), the language below is quoted directly from the statutes, policies and procedures.

The references in the chart are to the Foreign Assistance Act and the United States Code (U.S.C.), OPIC cites to the FAA, but for purposes of legal research, we provide the citation to the United States Code as well.⁷ See the Appendix, page 56, for a conversion chart.

Standards: Environmental

General		
General Environmental Standards OPIC Environmental Handbook FAA §231(n) / 22 U.S.C. §2191(n) FAA §117(c)(1) / 22 U.S.C. §2151p(c)(1)	OPIC will assure that the projects it supports are consistent with sound environmental and worker rights standards. In conducting its programs, OPIC will also take into account guidance from the Administration and Congress on a country's observance of, and respect for, human rights (<i>OPIC Environmental Handbook, excerpt from OPIC Mission Statement</i>) <ul style="list-style-type: none"> OPIC shall refuse to insure, reinsure, guarantee, or finance any investment in connection with a project if it determines the project will pose: <ul style="list-style-type: none"> An unreasonable or major environmental, health, or safety hazard, OR The project will result in the significant degradation of national parks or similar protected areas. (<i>FAA §231(n)</i>) When implementing projects, OPIC must take fully into account the impact of the project upon the environment and natural resources of developing countries. (<i>FAA §117(c)(1)</i>) 	
Overview of Categorically Prohibited Projects OPIC Environmental Handbook, App. F, Glossary	OPIC cannot finance the following: <ul style="list-style-type: none"> Projects that significantly degrade national parks, tropical rainforest, endangered species habitat or similar protected areas. Large dams that significantly affect the environment or displace 5,000+ people. Projects that harm sites traditionally protected by local communities. 	<ul style="list-style-type: none"> Projects that involve the manufacture of ozone-depleting substances or banned persistent organic pollutants (POPs). Projects that impact selected internationally recognized protected areas. See pg. 58 for more details
Host Country Laws OPIC Environmental Handbook, Enviro. Standards Section	<ul style="list-style-type: none"> <u>All projects must comply with host country environmental laws and regulations.</u> <ul style="list-style-type: none"> Whenever possible, applicants must provide OPIC with summaries or copies of applicable host country laws and regulations. 	

⁷ The most important act for OPIC purposes is the Foreign Assistance Act, which was originally passed in 1961. The laws creating OPIC – known as OPIC's authorizing or governing statutes – were passed as amendments to the FAA in 1971. Sections of individual acts (e.g., FAA §231) correspond to sections of the U.S. Code (e.g., 22 U.S.C. §2191.) Since FAA §231 corresponds to 22 U.S.C. §2191, the sections are interchangeable – they have the same exact language and the same exact legal effect. You may cite either one in your Compliance Review or Problem-Solving complaint. The Citizen's Guide cites both sources throughout the guide. OPIC materials, specifically the 2004 OPIC Environmental Handbook, cite the FAA. However, it is generally easier to find provisions using the U.S. Code designation when searching electronic databases.

Standards: Environmental**General**

<p>Required Environmental Impact Statements and Assessments</p> <p>FAA §239(g) / 22 U.S.C. §2199(g)</p> <p>FAA §117(c) / 22 U.S.C. §2151p(c)</p>	<ul style="list-style-type: none"> • The requirements of FAA §117(c)/22 U.S.C. §2151p(c) relating to environmental impact statements and environmental assessments shall apply to any investment that OPIC insures, reinsures, guarantees, or finances in connection with a project in a country. (FAA §239(g)) • Environmental Impact Statement : OPIC must prepare and take fully into account an environmental impact statement for any project significantly affecting the environment of the global commons outside the jurisdiction of any country or the environment of the United States before approving a project. (FAA §117(c)) <ul style="list-style-type: none"> ○ See Part III, page 46, for a description of Environmental Impact Statements. • Environmental Assessment: OPIC must prepare and take fully into account an environmental assessment of any proposed project significantly affecting the environment of any foreign country before approving a project. (FAA §117(c)) <ul style="list-style-type: none"> ○ Most OPIC projects fall under the Environmental Assessment provision, and OPIC has created detailed Environmental Assessment (EA) procedures. After an Environmental Screening process, OPIC conducts different levels of Environmental Assessment according to predicted levels of environmental impact on the host country environment. <p>Projects that significantly impact the environment are labeled “Category A” projects, and receive in-depth environmental assessments. Other categories (B, C, D, and E) receive less stringent environmental assessments. “Category F” projects are prohibited. See page 42 for a detailed breakdown of OPIC Categories.</p> <ul style="list-style-type: none"> ○ Note: The term “Environmental Assessment” is an umbrella term for a number of different environmental investigations and reporting procedures, any combination of which could qualify as broader Environmental Assessment depending on the project’s designated category. The following are the potential component parts of OPIC’s Environmental Assessment procedures: <ul style="list-style-type: none"> • Environmental Impact Assessment (EIA); • Initial Environmental Audit (IEAU); • Environmental Management and Monitoring Plan (EMMP); • Environmental Remediation Plan (ENR); • Major Hazard Assessment (MHA). ○ See Part III, pages 45-46 for a description of the Environmental Assessment process and its component environmental reporting mechanisms. • Local Resources: OPIC should, where appropriate, use local technical resources in preparing environmental impact statements and environmental assessments. (FAA §117(c)) • Exception: Exceptions may be made for emergency conditions and cases in which compliance with the above requirements would be seriously detrimental to the foreign policy interest of the United States. (FAA §117(c))
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Standards: Environmental**General**

<p>Cumulative and Associated (Connected) Impact Assessment</p> <p>OPIC Environmental Handbook, Environmental Standards</p>	<p>In considering project applications, OPIC takes into account in its decision-making process the overall environmental effects of its projects. The agency will avoid support where OPIC involvement in a project results in cumulative or associated impacts that violate OPIC standards.</p> <ul style="list-style-type: none"> • <u>Cumulative Impact Assessment:</u> Includes projects or potential developments that are sufficiently defined at the time the Environmental Assessment is undertaken, when these would directly impact the project area. Cumulative impacts may result from individually minor but collectively significant actions taking place over a period of time. • <u>Associated (Connected) Impact Assessment:</u> Assessing associated or connected impacts recognizes that certain other industrial processes are directly and indirectly linked with the project being assessed and their environmental impacts must be incorporated into the Environmental Assessment.
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Standards: Environmental**Resource & Activity**

Resource- and Activity-Specific Environmental Standards	
<p>Tropical Forests</p> <p>FAA §118 / 22 U.S.C. §2151p-1</p> <p>These provisions are incorporated by reference in FAA §231(2) / 22 U.S.C. §2191(2)</p>	<ul style="list-style-type: none"> • Generally: In providing assistance to developing countries, OPIC must place a high priority on conservation and sustainable management of tropical forests. (FAA § 118(c)(1)) • Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss results in: <ul style="list-style-type: none"> ○ Destruction of indigenous peoples; ○ Loss of biologically productive wetlands; ○ Siltation of lakes, reservoirs and irrigation systems; ○ Floods; ○ Wood shortages; ○ Extinction of plant and animal species; reduced capacity for food production; ○ Loss of genetic resources; ○ Possible desertification;; and ○ Possible destabilization of the earth's climate. (FAA § 118(a)) • OPIC must give high priority to the above concerns when formulating and carrying out programs and policies with respect to developing countries and in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries. (FAA § 118(b)) • Information Exchange: In providing assistance to developing countries, OPIC must, to the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and which identify and focus on policies of those countries which directly or indirectly contribute to deforestation. (FAA § 118(c)(2)) • Biological Diversity: In providing assistance to developing countries, OPIC must, to the fullest extent feasible, conserve biological diversity in forest areas by, whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation. (FAA § 118(c)(10)) • Impact Analysis and Requirements: In providing assistance to developing countries, OPIC must require that any project significantly affecting tropical forests (including projects involving the planting of exotic plant species): <ul style="list-style-type: none"> ○ Be based upon careful analysis of the alternatives possible to achieve the best sustainable use of the land. ○ Take full account of the environmental impacts of the proposed activities on biological diversity as provided for in the environmental procedures of USAID. (See USAID Environmental Compliance Procedures, 22 CFR Part 216, <i>available at</i> http://www.access.gpo.gov/nara/cfr/waisidx_05/22cfr216_05.html.) (FAA § 118(c)(13))

Standards: Environmental**Resource & Activity**

Tropical Forests, cont'd	<ul style="list-style-type: none"> • Prohibitions: In providing assistance to developing countries, OPIC must DENY assistance for the following activities UNLESS an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development. <ul style="list-style-type: none"> ○ Activities that would result in the conversion of forest lands to the rearing of livestock. ○ The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively non-degraded forest lands. ○ The colonization of forest lands. ○ The construction of dams or other water control structures which flood relatively non-degraded forest lands. (FAA § 118(c)(14))
Forestry Standards/Certification OPIC Environmental Handbook, Environmental Standards Section	<p>Categorical Prohibition: OPIC will not support commercial timber harvesting in critical forest areas or related critical natural habitats. Critical forest areas are defined as a type of natural forest that qualifies as a critical natural habitat.</p> <p><u>Definition of Critical Natural Habitats:</u></p> <ol style="list-style-type: none"> 1. Existing internationally recognized protected areas, areas initially recognized as protected by traditional local communities (e.g., sacred groves), and sites that maintain conditions vital to the viability of protected areas (as determined by the environmental assessment procedure). 2. Sites identified on supplementary lists by authoritative sources identified by OPIC. Such sites may include areas recognized by traditional local communities, areas with known high suitability for biodiversity conservation, and sites that are critical for vulnerable, migratory, or endangered species. Listings are based on systematic evaluations of such factors as species richness, the degree of endemism, rarity, and vulnerability of component species, representatives and the integrity of ecosystem processes. <p>Required Certification: Due to the difficulty of implementing consistent sustainability across a broad range of ecological conditions, all other OPIC-supported projects involving extraction from natural forests, including all boreal/temperate forests and all secondary forests, must be and remain certified by an independent non-governmental organization.</p> <ul style="list-style-type: none"> ○ The certifying organization must be accredited by an international accreditation body (such as the Forest Stewardship Council) that may hold the certifier accountable to a common set of principles and procedural protocols, including periodic review and re-accreditation. ○ Accredited certifiers are required to adhere to an internationally agreed set of forest management performance standards, which incorporate a comprehensive range of environmental and social criteria developed by a diverse group of interests, organizations and stakeholders. ○ Any forest product labeling associated with a certified forest must be guaranteed by a separate certification that credibly connects the labeled product to its certified forest-of-origin.

Standards: Environmental**Resource & Activity**

<p>Endangered Species</p> <p>FAA §119 / 22 U.S.C. §2151q</p> <p>These provisions are incorporated by reference in FAA §231(2) / 22 U.S.C. §2191(2)</p>	<ul style="list-style-type: none"> The Congress finds that the extinction of animal and plant species is an irreparable loss with potentially serious environmental and economic consequences for developing and developed countries alike. Accordingly, the preservation of animal and plant species through the regulation of hunting and trade in endangered species, through limitations on the pollution of natural ecosystems, and through the protection of wildlife habitats should be an important objective of the United States development assistance. (FAA § 119(a))
<p>Climate Change</p> <p>OPIC Environmental Handbook, Climate Change and Renewable Energy Section</p>	<p><u>Climate Change Reporting:</u> In an effort to support the management of global greenhouse gas emissions, OPIC tracks and reports, on an aggregate basis, the annual greenhouse gas emissions from its power sector projects. OPIC will track and report, on an aggregate basis, the annual greenhouse gas emissions from other greenhouse gas-emitting projects to the extent an appropriate framework is available. Aggregate tracking results will be available to the public and reported annually to Congress in OPIC's Annual Environmental Report.</p>
<p>Dams</p> <p>OPIC Environmental Handbook, Environmental Standards Section</p>	<p><u>Categorical Prohibition:</u> OPIC does not support the construction of large dams that significantly and irreversibly cause any of the following impacts:</p> <ul style="list-style-type: none"> Disruption of Natural Ecosystems; Alteration of Natural Hydrology; Inundation of Large Land Areas; Biodiversity Impacts; Displacement of Inhabitants (5,000+ person displacement); Impact on Local Inhabitants' Livelihoods, including: <ul style="list-style-type: none"> Impairment or elimination of traditional hunting or fishing methods, Elimination of scarce agricultural lands, Elimination of access to drinking or irrigation water, Project-related increases in endemic diseases. <p><u>For Dams NOT categorically prohibited:</u> OPIC proceeds with Environmental Assessment process.</p> <ul style="list-style-type: none"> OPIC's assessment also includes at least an evaluation of the following factors: <ul style="list-style-type: none"> Hydrological and Limnological Impacts; Catchment Area Impacts; Construction Impacts; Air Quality and Global Climate Change Impacts; Resettlement; Project Acceptability See the 2004 OPIC Environmental Handbook Dam Standards section for more detailed information on OPIC Dam Standards and relevant international standards. (http://www.opic.gov/doingbusiness/investment/environment/documents/opic_env_handbook.pdf)

Standards: Environmental**Resource & Activity**

<p>Ecotourism</p> <p>OPIC Environmental Handbook, Environmental Standards</p>	<ul style="list-style-type: none"> • OPIC-supported ecotourism projects seek to balance profitability with ecological sustainability and respect for indigenous cultures. • <u>All ecotourism projects should address the following issues:</u> <ul style="list-style-type: none"> ○ A comprehensive plan to protect ecological integrity and enhance community participation. ○ Local community capacity building that provides necessary skills for ecotourism development, while ensuring that this development merges with traditional practices. ○ The primary revenue source of the project must be directly linked to the conservation effort.
<p>Fossil fuels</p> <p>FAA §234(c) and (d) / 22 U.S.C. §2194(c) and (d)</p>	<ul style="list-style-type: none"> • OPIC cannot make a direct investment loan to finance oil or gas extraction, and the total amount of direct investment loans for mining or other extraction of any deposit of ore or other non-fuel minerals may not exceed \$4 million in any fiscal year. (FAA § 234(c)) <p><u>Note:</u> OPIC provides two types of financing: Direct loans and loan guaranties. The provision above applies only to direct loans, not to loan guaranties.</p> <ul style="list-style-type: none"> • OPIC cannot finance any survey to ascertain the existence, location, extent, or quality of oil or gas reserves, or to determine the feasibility of undertaking operations to extract oil or gas. <ul style="list-style-type: none"> ○ Expenditures financed by OPIC during any fiscal year on surveys to ascertain the existence, location, extent, or quality of, or to determine the feasibility of undertaking operations for the extraction of non-fuel minerals may not exceed \$200,000. (FAA §234(d))

Standards: Environmental**Monitoring & Compliance**

Monitoring and Compliance	
<p>Contract Conditionality</p> <p>OPIC Environmental Handbook, Conditionality Section</p>	<ul style="list-style-type: none"> In many cases, OPIC's determination of project eligibility relies on critical representations made by the client with respect to baseline environmental conditions, mitigating measures, and net impacts of proposed projects. <p>Note: Environmental Assessment documents, like the Environmental Management and Monitoring Plan or the Environmental Remediation plan, are often incorporated into projects' financial agreement with OPIC. If environmental conditions are included in the financial agreement and the project sponsor fails to comply with the conditions, the project sponsor may be in breach of contract. Any breach of environmental contract conditions (or other contract conditions, like human rights, labor, etc.) may potentially be a basis for complaint to the Office of Accountability. Please see page 40 for instructions on how to request documents from OPIC.</p> <ul style="list-style-type: none"> <u>Additional Required Mitigation Measures:</u> In addition to environmental management and remediation plans submitted by the applicant, OPIC may require the application of additional mitigating measures in order to ensure that a project will not pose an unreasonable or major environmental, health, or safety hazard. <ul style="list-style-type: none"> These critical representations and those undertakings agreed to by the applicant or sponsor may be included in OPIC project documentation as preconditions to contract execution, conditions of disbursement and/or ongoing covenants, depending on the type of agreement entered into between OPIC and the applicant. Where OPIC insures an institutional lender, contract conditions are incorporated into the loan documentation. <u>Project Compliance:</u> <ul style="list-style-type: none"> Category A Activities: For investments in all projects in Category A activities, OPIC expects the project to comply with <u>all contractual conditions and critical and material representations regardless of whether the OPIC-supported investor has a controlling interest in the foreign enterprise.</u> Non-Category A Activities: OPIC will accept a "best efforts" commitment on the part of the OPIC-insured investor where the investor lacks a controlling interest or operational control. Non-compliance with contractual conditions may constitute an Event of Default. Please see the "Non-Compliance, Remediation and Contract Termination" segment below. Also see the "Fraud Penalties" segment on page 41.

Standards: Environmental**Monitoring & Compliance**

<p>Environmental Monitoring</p> <p>OPIC Environmental Handbook, Monitoring and Compliance Section</p>	<ul style="list-style-type: none"> • OPIC reserves the right to monitor projects' compliance with environmental representations and undertakings throughout the term of insurance or financing. Monitoring may take the form of self-reporting by the investor of summaries and, in specified cases, raw data obtained from monitoring projects' environmental performance (e.g., emissions, effluents, or other waste discharges,) as well as its environmental impacts (e.g., on ambient conditions and biological resources.) • Required Annual Self-Monitoring Reports for Category A projects: Self-monitoring may take the form of third-party evaluation, including compliance information developed by host government authorities, co-lenders, and independent auditors. Self-monitoring reports must provide OPIC with regular testing results for any of the following standards that were represented by the investor: <ul style="list-style-type: none"> ○ Emission standards; ○ Effluent Standards; ○ Ambient air limitations; ○ Water quality limitations. • OPIC Monitoring: OPIC routinely conducts on-site monitoring of projects, using OPIC staff and/or consultants, for environmental and environmentally-based social impacts as well as U.S. economic and host country development effects. <ul style="list-style-type: none"> ○ <u>Category A Monitoring</u> – OPIC endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project. ○ <u>Non-Category A Monitoring</u> – Category B, D and E projects are also subject to monitoring on a random and selective basis.
<p>Category A Compliance Audits</p> <p>OPIC Environmental Handbook, Monitoring and Compliance Section</p>	<p>OPIC requires project sponsors to conduct, and to certify that they have conducted, third-party independent audits for all Category A projects.</p> <p><u>Specific Requirements:</u></p> <ul style="list-style-type: none"> • At least one independent third-party audit must be conducted, generally within the first three years of all Category A projects, and the sponsor must provide certification to OPIC that OPIC's contract conditions have been met. (Note: OPIC retains the right to review all compliance audits.) • Category A projects will be required to conduct further certified independent audits if the investor fails to submit contractually-required annual self-monitoring reports in a timely manner or if monitoring trips or other information indicates a need for further audits. • Independent third-party compliance audits allow OPIC-supported projects to be evaluated in an objective and systematic manner based on defined criteria. Proper execution of an audit requires active cooperation of project owners and/or managers, good coordination of all interviews and sampling activities in order to reduce costs and a carefully documented inspection to support all findings and recommendations. <p><u>Design and Purpose:</u></p> <ul style="list-style-type: none"> • These audits are designed to take place after an OPIC-supported project begins construction or is operational. • The purpose of these audits is to evaluate a project's compliance with all environmental and social conditions (and underlying representations) that are reflected in OPIC's environmental and social requirements with respect to the project. • The purpose is also to validate the methodology used for all self-monitoring reports.

Standards: Environmental**Monitoring & Compliance**

<p>Non-Compliance, Remediation, and Contract Termination</p> <p>OPIC Environmental Handbook, Monitoring and Compliance Section</p>	<ul style="list-style-type: none"> • <u>Event of Default:</u> Material misrepresentation or non-compliance with environmental undertakings may constitute an event of default under the terms of OPIC insurance contracts and loan agreements. (Note: failure to meet contractually required reporting requirements may constitute a default.) • <u>Curable or Incurable:</u> Depending on the severity and reversibility of the environmental impact and the investor's responsibility and due diligence in attempting to prevent the default and in curing the problem, OPIC may treat the default as curable or incurable. <ul style="list-style-type: none"> ○ <u>If the default is curable</u>, OPIC works with the investor to develop a feasible timetable for remediation. ○ <u>If the default is incurable</u>, OPIC may require contract termination in the case of insurance, or acceleration of repayment or other available lenders' remedies, in the case of a loan. If an equity investment on the part of a financial intermediary is involved, divestiture by the financial intermediary may be required.
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Standards: Environmental**Transparency**

Transparency	
<p>Host Country Notification Requirements</p> <p>FAA §237(m)(1) / 22 U.S.C. §2197(m)(1)</p>	<ul style="list-style-type: none"> Before finally providing insurance, reinsurance, guarantees, or financing for any environmentally sensitive investment in connection with a project in a country, OPIC shall notify appropriate government officials of that country of: <ul style="list-style-type: none"> International Guidelines: All guidelines and other standards adopted by the International Bank for Reconstruction and Development (World Bank) and any other international organization relating to the public health or safety or the environment which are applicable to the project, and United States Environmental Restrictions: To the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States. The notification shall include a summary of the abovementioned guidelines, standards, and restrictions, and may include any environmental impact statement, assessment, review or study. Comments: Before finally providing insurance, reinsurance, guarantees, or financing for any environmentally sensitive investment, OPIC shall take into account any comments it receives on the project involved. <i>See also</i>, OPIC Environmental Handbook (Public Consultation and Disclosure Section, as well as Appendix H).
<p>60-day Environmental Assessment Comment Period</p> <p>FAA §231a(b) / 22 U.S.C. §2191a(b)</p> <p>OPIC Environmental Handbook, Environmental Screening Section</p>	<ul style="list-style-type: none"> OPIC's Board of Directors may not vote in favor of any proposed action that is likely to have <u>significant adverse environmental impacts that are sensitive, diverse or unprecedented</u>, unless: <ul style="list-style-type: none"> 60 days before the vote, the environmental impact assessment or audit has been made available to locally affected groups in the host country, host country nongovernmental organizations, and the U.S. public, and 60 days before the vote, an environmental impact assessment or initial environmental audit analyzing the action's potential impacts and of alternatives to the proposed action has been completed by the project applicant and made available to the Board of Directors. (FAA §231a(b)) Note: Only Category A projects will be subject to this section because only Category A projects, according to OPIC policies, have significant adverse environmental impacts. (OPIC Environmental Handbook, Environmental Screening)

Standards: Environmental**International**

International Standards																																											
World Bank Guidelines World Bank Pollution Prevention and Abatement Handbook OPIC Environmental Handbook, Environmental Standards Section and App. G	In determining whether a project will pose an unreasonable or major environmental, health, or safety hazard, or will result in significant degradation of national parks or similar protected areas, OPIC relies on guidelines and standards adopted by international organizations such as the World Bank Group.																																										
	OPIC applies the most current World Bank Group guideline to every project to which such Guidelines are applicable. Current guidelines are contained within the World Bank Group 1998 Pollution Prevention and Abatement Handbook (PPAH) (http://www.ifc.org/ifcext/enviro.nsf/Content/PPAH#Part1). (OPIC Environmental Handbook, Environmental Standards Section) Please see the Appendix for a full list of the Pollution Prevention and Abatement Handbook sections.																																										
	<u>Industry Sectors in the PPAH:</u> <table><tr><td>Aluminum Manufacturing</td><td>General Environmental Guidelines</td><td>Petrochemicals Manufacturing</td></tr><tr><td>Base Metal & Iron Ore Mining</td><td>Glass Manufacturing</td><td>Petroleum Refining</td></tr><tr><td>Breweries</td><td>Industrial Estates</td><td>Pharmaceutical Manufacturing</td></tr><tr><td>Cement Manufacturing</td><td>Iron & Steel Manufacturing</td><td>Phosphate Fertilizer Plants</td></tr><tr><td>Chlor-Alkali Plants</td><td>Lead & Zinc Smelting</td><td>Printing Industry</td></tr><tr><td>Coal Mining & Production</td><td>Meat Processing & Rendering</td><td>Pulp & Paper Mills</td></tr><tr><td>Coke Manufacturing</td><td>Mini Steel Mills</td><td>Sugar Manufacturing</td></tr><tr><td>Copper Smelting</td><td>Mixed Fertilizer Plants</td><td>Tanning & Leather Finishing</td></tr><tr><td>Dairy Industry</td><td>Nickel Smelting & Refining</td><td>Textiles Industry</td></tr><tr><td>Dye Manufacturing</td><td>Nitrogenous Fertilizer Plants</td><td>Thermal Power for New Plants</td></tr><tr><td>Electronics Manufacturing</td><td>Oil & Gas Dev (Onshore)</td><td>Thermal Power Rehabilitation</td></tr><tr><td>Electroplating Industry</td><td>Pesticides Formulation</td><td>Vegetable Oil Processing</td></tr><tr><td>Foundries</td><td>Pesticides Manufacturing</td><td>Wood Preserving Industry</td></tr><tr><td>Fruit & Vegetable Processing</td><td></td><td></td></tr></table>		Aluminum Manufacturing	General Environmental Guidelines	Petrochemicals Manufacturing	Base Metal & Iron Ore Mining	Glass Manufacturing	Petroleum Refining	Breweries	Industrial Estates	Pharmaceutical Manufacturing	Cement Manufacturing	Iron & Steel Manufacturing	Phosphate Fertilizer Plants	Chlor-Alkali Plants	Lead & Zinc Smelting	Printing Industry	Coal Mining & Production	Meat Processing & Rendering	Pulp & Paper Mills	Coke Manufacturing	Mini Steel Mills	Sugar Manufacturing	Copper Smelting	Mixed Fertilizer Plants	Tanning & Leather Finishing	Dairy Industry	Nickel Smelting & Refining	Textiles Industry	Dye Manufacturing	Nitrogenous Fertilizer Plants	Thermal Power for New Plants	Electronics Manufacturing	Oil & Gas Dev (Onshore)	Thermal Power Rehabilitation	Electroplating Industry	Pesticides Formulation	Vegetable Oil Processing	Foundries	Pesticides Manufacturing	Wood Preserving Industry	Fruit & Vegetable Processing	
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<u>Where no sector-specific guideline exists for a particular project, OPIC will apply:</u> <ul style="list-style-type: none">the World Bank General Environmental Guidelines<ul style="list-style-type: none">http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_genenv_WB/\$FILE/genenv_PPAH.pdf, andthe IFC Occupational Health and Safety Guidelines<ul style="list-style-type: none">http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_GeneralEHS_2/\$FILE/2+Occupational+Health+and+Safety.pdf<u>Exceptions:</u> Mining and Milling – Underground (1995) and Open Pit (1995).																																											

Standards: Environmental**International**

<p>World Bank Group - International Finance Corporation Guidelines</p> <p>IFC Environmental, Health, and Safety Guidelines</p> <p>OPIC Environmental Handbook, Environmental Standards Section and App. G</p>	<p>In addition to the World Bank Group Pollution Prevention and Abatement Handbook, the World Bank Group's International Finance Corporation has issued Operational Policies on a variety of cross-cutting environmental and social issues. According to OPIC's Environmental Handbook "OPIC uses these policies to the extent applicable to private sector investments." The policies in effect from 1998 to April 2006 are listed immediately below. In 2006, the IFC adopted a new safeguard policy to replace the previous policies. This "Social and Environmental Sustainability Policy" requires, among other things, that IFC ensure that for projects with significant adverse impacts the client has pursued "free, prior and informed consultation" with affected communities that leads to "broad community support." For projects that might affect indigenous peoples, the requirement for "free, prior, and informed consultation leading to broad community support" is required for projects that have adverse impacts.</p> <p><u>IFC Environmental and Social Safeguard Policies (Operational Policies) (1998-April 2006):</u></p> <ul style="list-style-type: none"> • Environmental Assessment (Annexes and Guidance Notes) <ul style="list-style-type: none"> ◦ http://www ifc org/ifcext/enviro nsf/AttachmentsByTitle/pol_EnvAssessment/\$FILE/OP401_EnvironmentalAssessment pdf • Natural Habitats <ul style="list-style-type: none"> ◦ www ifc org/ifcext/enviro nsf/AttachmentsByTitle/pol_NatHabitats/\$FILE/OP404_NaturalHabitats pdf • Pest Management <ul style="list-style-type: none"> ◦ www ifc org/ifcext/enviro nsf/AttachmentsByTitle/pol_PestMgmt/\$FILE/OP409_PestManagement pdf • Forestry <ul style="list-style-type: none"> ◦ www ifc org/ifcext/enviro nsf/AttachmentsByTitle/pol_Forestry/\$FILE/OP436_Forestry pdf • Safety of Dams <ul style="list-style-type: none"> ◦ www ifc org/ifcext/enviro nsf/AttachmentsByTitle/pol_SafetyOfDams/\$FILE/OP437_SafetyOfDams pdf • International Waterways <ul style="list-style-type: none"> ◦ www ifc org/ifcext/enviro nsf/AttachmentsByTitle/pol_Waterways/\$FILE/OP750_IntlWaterways pdf • Involuntary Resettlement <ul style="list-style-type: none"> ◦ http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/toc2/CA2D01A4D1BDF58085256B19008197F6?OpenDocument • Indigenous Peoples <ul style="list-style-type: none"> ◦ http://wbIn0018.worldbank.org/institutional/manuals/opmanual.nsf/toc2/0F7D6F3F04DD70398525672C007D08ED?OpenDocument • Safeguarding Cultural Property <ul style="list-style-type: none"> ◦ http://wbIn0018.worldbank.org/institutional/manuals/opmanual.nsf/023c7107f95b76b88525705c002281b1/61a8fc9168e4c7fe852571b6006cdb54?OpenDocument <p><u>IFC Social and Environmental Sustainability Policy and Performance Standards (effective April 30, 2006):</u></p> <ul style="list-style-type: none"> • Social and Environmental Sustainability Policy <ul style="list-style-type: none"> ◦ http://www.ifc.org/ifcext/enviro.nsf/Content/SustainabilityPolicy • Disclosure Policy <ul style="list-style-type: none"> ◦ http://www.ifc.org/ifcext/enviro.nsf/Content/Disclosure • Performance Standards (http://www.ifc.org/ifcext/enviro.nsf/Content/PerformanceStandards): <ul style="list-style-type: none"> ◦ Social and Environmental Assessment and Management System ◦ Labor and Working Conditions ◦ Pollution Prevention and Abatement ◦ Community Health, Safety and Security ◦ Land Acquisition and Involuntary Resettlement ◦ Biodiversity Conservation and Sustainable Natural Resources Management ◦ Indigenous Peoples ◦ Cultural Heritage
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Standards: Environmental**International**

World Bank Group - International Finance Corporation Guidelines	OPIC also uses IFC Environmental, Health, and Safety Guidelines to the extent applicable to private sector investments.		
	<u>Industry Sectors in IFC Environmental, Health, and Safety Guidelines (1998-2006):</u>		
	Airports	Health Care	Rail Transit Systems
	Ceramic Tile Manufacturing	Life and Fire Safety	Roads and Highways
	Construction Materials Plants	Occupational Health and Safety	Telecommunications
	Electric Power Transmission and Distribution	Office Buildings	Tourism and Hospitality Development
	Fish Processing	Oil and Gas Development – Offshore	Waste Management Facilities
	Food and Beverage Processing	Pesticide Handling and Application	Wastewater Reuse
	Forestry Operations (Logging)	Plantations	Wildland Management
	Gas Terminal Systems	Polychlorinated Biphenyls (PCBs)	Wind Energy Conversion Systems
Geothermal Power	Port and Harbor Facilities	Wood Products Industries	
OPIC Environmental Handbook, Environmental Standards Section and App. G			
<u>Industry Sectors in IFC Environmental, Health, and Safety Guidelines (April 30, 2006):</u>			
Forestry	General Manufacturing	Chemicals	
<ul style="list-style-type: none">• Board and Particle-based Products• Sawmilling and Wood-based Products• Forest Harvesting Operations• Pulp and Paper Mills (This document is under review)	<ul style="list-style-type: none">• Cement and Lime Manufacturing• Ceramic Tile and Sanitary Ware Manufacturing• Glass Manufacturing• Construction Materials Extraction• Textiles Manufacturing• Tanning and Leather Finishing• Semiconductors and Electronics Manufacturing• Printing• Foundries• Integrated Steel Mills• Base Metal Smelting and Refining• Metal, Plastic, Rubber Products Manufacturing	<ul style="list-style-type: none">• Pharmaceuticals and Biotechnology Manufacturing• Coal Processing• Natural Gas Processing• Oleochemicals Manufacturing• Nitrogenous Fertilizer Manufacturing• Phosphate Fertilizer Manufacturing• Pesticides Formulation, Manufacturing and Packaging• Petroleum-based Polymers Manufacturing• Petroleum Refining• Large Volume Petroleum-based Organic Chemicals Manufacturing• Large Volume Inorganic Compounds Manufacturing and Coal Tar Distillation (This document is under review.)	
Agribusiness/Food Production	Oil and Gas		
<ul style="list-style-type: none">• Mammalian Livestock Production• Poultry Production• Plantation Crop Production• Annual Crop Production• Aquaculture• Sugar Manufacturing• Vegetable Oil Processing• Dairy Processing• Fish Processing• Meat Processing• Poultry Processing• Breweries• Food and Beverage Processing	<ul style="list-style-type: none">• Offshore Oil and Gas Development• Onshore Oil and Gas Development• Liquefied Natural Gas (LNG) Facilities		
Mining			
<ul style="list-style-type: none">• This document is under review.			

Standards: Environmental**International**

<p>World Bank Group - International Finance Corporation Guidelines</p> <p>IFC Environmental, Health, and Safety Guidelines</p>	<p>IFC Industry Sectors cont'd:</p> <table><tr><td><p>Power</p><ul style="list-style-type: none">• Wind Energy• Geothermal Power Generation• Electric Power Transmission and Distribution• Thermal Power (This document is under review.)</td><td><p>Infrastructure</p><ul style="list-style-type: none">• Tourism and Hospitality Development• Railways• Ports, Harbors and Terminals Airports• Airlines• Shipping• Gas Distribution Systems• Toll Roads• Telecommunications</td><td><ul style="list-style-type: none">• Crude Oil and Petroleum Product Terminals• Retail Petroleum Networks• Health Care Facilities• Waste Management Facilities (This document is under review.)• Water and Sanitation (This document is under review.)</td></tr></table>	<p>Power</p> <ul style="list-style-type: none">• Wind Energy• Geothermal Power Generation• Electric Power Transmission and Distribution• Thermal Power (This document is under review.)	<p>Infrastructure</p> <ul style="list-style-type: none">• Tourism and Hospitality Development• Railways• Ports, Harbors and Terminals Airports• Airlines• Shipping• Gas Distribution Systems• Toll Roads• Telecommunications	<ul style="list-style-type: none">• Crude Oil and Petroleum Product Terminals• Retail Petroleum Networks• Health Care Facilities• Waste Management Facilities (This document is under review.)• Water and Sanitation (This document is under review.)
<p>Power</p> <ul style="list-style-type: none">• Wind Energy• Geothermal Power Generation• Electric Power Transmission and Distribution• Thermal Power (This document is under review.)	<p>Infrastructure</p> <ul style="list-style-type: none">• Tourism and Hospitality Development• Railways• Ports, Harbors and Terminals Airports• Airlines• Shipping• Gas Distribution Systems• Toll Roads• Telecommunications	<ul style="list-style-type: none">• Crude Oil and Petroleum Product Terminals• Retail Petroleum Networks• Health Care Facilities• Waste Management Facilities (This document is under review.)• Water and Sanitation (This document is under review.)		
<p>Other International Guidelines</p> <p>OPIC Environmental Handbook, Environmental Standards Section</p>	<p>Where gaps exist in World Bank Group Guidelines on a given environmental or natural resource issue, OPIC incorporates the following in its environmental assessment and decision-making process:</p> <ul style="list-style-type: none">• Relevant and applicable U.S. federal standards• World Health Organization standards (http://www.who.org), and• Standards set by other international authorities<ul style="list-style-type: none">◦ Examples:◦ Sustainable forestry guidelines from the Forest Stewardship Council (http://www.fscus.org/)◦ Ecotourism guidelines developed by Conservation International (http://www.conservation.org) and the International Ecotourism Society (http://www.ecotourism.org/)◦ The 2000 report of the World Commission on Dams (http://www.dams.org/report)			
<p>OECD Guidelines</p>	<p>The United States is a member of the Organisation for Economic Co-operation and Development (OECD), and the OECD regulations are applicable to U.S. government and OPIC actions.</p> <p>OECD Legal Instruments and Recommendations may be accessed here: http://webdomino1.oecd.org/horizontal/oecdacts.nsf/subject?openview&count=1000</p> <p>OECD Guidelines on Multinational Enterprises http://webdomino1.oecd.org/horizontal/oecdacts.nsf/Display/750670502581F7DAC1257088005805E8?OpenDocument</p> <p>(Note: The NGO OECD Watch has created a guide to the complaint procedure under the Guidelines: www.germanwatch.org/tw/oecd-gui06.pdf)</p>			

Standards: Environmental**Financial**

Standards for Unique Financial Activities	
Privatizations OPIC Environmental Handbook, Environmental Standards Section	<p>For projects involving privatizations of previously existing facilities, OPIC applies screening and environmental assessment and management criteria that are commensurate with the continuing and incremental environmental impacts of the project.</p> <p><u>Standards for Environmental Assessment and Management:</u></p> <p>World Bank Group guidelines or other applicable environmental standards (See “International Standards” section) are used as clearly defined objectives to be attained within a reasonable period of time after an OPIC-supported investment has been made.</p> <ul style="list-style-type: none"> ○ <u>New Facilities, Activities Undertaken by Privatized Entity</u> – Must conform to applicable standards for greenfield projects. Projects are designated as “greenfield projects” when a private entity or a public-private joint venture is building and operating a new facility, instead of using an existing facility. ○ <u>Pre-existing Facilities</u> – If pre-existing facilities do not meet the World Bank Group standards or applicable standards for greenfield projects, the project sponsor is required to upgrade to meet the applicable standards within an agreed-upon reasonable time period, typically three years. ○ <u>Thermal Power Plants</u> – OPIC will follow specific World Bank Group Guidelines for the rehabilitation of thermal power plants. http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_thermrehab_WB/\$FILE/thermrehab_PPAH.pdf
Investments in Large, Diversified Enterprises OPIC Environmental Handbook, Environmental Standards Section	<p>When a company seeks OPIC insurance or financing for an investment in an existing large, diversified enterprise having environmental impacts beyond the normal scope of the Environmental Assessment process, OPIC requires the investor to narrow the scope of the company’s proposed use of the proceeds of the OPIC-assisted investment to specific projects for which the environmental impacts may be readily assessed.</p>
Bid Bonds OPIC Environmental Handbook, Environmental Standards Section	<p>OPIC is sometimes asked to insure a company’s posting of a bond in connection with a greenfield or privatization project for which the company is bidding competitively. The bid bond process is typically a very short-term transaction, lasting no more than a few weeks or months, during which time the bidders do not typically have access to environmental information about the project or the site. It is only after the bid is awarded that such information becomes available.</p> <p><u>Treatment:</u> OPIC’s commitment to a bid bond in no way commits OPIC to supporting the project should the bid be successful. If a successful bidder seeks subsequent OPIC support in the form of insurance or financing for an investment in the project, OPIC treats the application as it would any other project. If the bid is unsuccessful, OPIC’s involvement with the project ends with the termination of the bidding process.</p> <p><u>Categorization:</u> Given the absence of environmental information at the bid stage, OPIC treats bid bonds as Category C projects. If information is available indicating the project is subject to a categorical prohibition, the project would fall into Category F, and OPIC would decline support for the bid.</p>

Standards: Environmental**Financial**

<p>Investment Funds Policy</p> <p>OPIC Environmental Handbook</p>	<p><u>Explainer:</u> Investment funds are one type of OPIC-supported financial intermediary. OPIC provides financing to support a number of privately owned and managed direct investment funds that have the capability to provide equity capital to facilitate business formation and expansion. The investment funds are privately owned, privately managed, and make their own commercially-based investment decisions.</p> <p><u>Category A Investment Fund Projects:</u> All Category A projects are subject to a full Environmental Impact Assessment or Initial Environmental Audit, as well as resulting terms and conditions unique to the project. (Note: where a fund proposes to invest in a company rather than a specific project, the fund must narrow the scope of the company's proposed use of the proceeds of the fund's investment to specific projects that may be readily assessed.)</p> <p><u>Non-Category A Investment Fund Projects:</u> All non-Category A projects involving a fund commitment greater than \$5 million require OPIC screening and assessment according to category. Non-Category A investment fund projects less than \$5 million may be designated as a "Non-Sensitive Small Project." (See below.)</p> <ul style="list-style-type: none"> • <u>Investments that do not initially meet World Bank Group guidelines:</u> Following OPIC review, investments may be authorized for non-Category A investments involving a fund commitment greater than \$5 million that do not initially meet the guidelines, under the following terms and conditions: <ul style="list-style-type: none"> ○ A detailed and time-sensitive remediation plan is developed. ○ The remediation plan is incorporated into the fund's investment arrangements with the portfolio company in a matter that provides the fund with legally binding enforcement rights in the event of material non-compliance. ○ At a minimum, the fund reports annually to OPIC regarding implementation of the remediation plan. • <u>In the event of material non-compliance</u> with the approved remediation plan, OPIC will require the fund to implement its enforcement rights or divest its position. Divestment must take place as soon as possible, taking into account liquidity, market constraints, and fiduciary responsibilities.
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Standards: Environmental**Financial**

Investment Funds: Non-Sensitive Small Projects	<p>Investment Funds: Non-Sensitive Small Projects</p> <p>OPIC Environmental Handbook</p> <p><u>Explainer:</u> Circumstances exist, such as a bid tender, in which a fund may need to make a decision on an investment opportunity in a number of days. To respond to this situation, OPIC developed the Non-Sensitive Small Projects expedited procedure in which all non-Category A portfolio investments involving a fund commitment of \$5 million or less may be invested in by the OPIC-supported fund prior to receiving formal environmental clearance.</p> <p>A fund investment may be designated a Non-Sensitive Small Project subject to the following conditions:</p> <ul style="list-style-type: none"> • The fund must explicitly request that the proposal be reviewed under an expedited process. • OPIC may ask follow-up questions for five business days following the date of initial submission of the subproject, in order to determine whether the proposed investment qualifies for expedited review. • The fund must represent that it has taken commercially reasonable efforts to obtain and provide all relevant environmental information to OPIC and has no reason to believe that the project would pose an unreasonable or major environmental, health, or safety hazard. • The fund must represent that it will continue to obtain and disclose to OPIC any material supplemental environmental, health, or safety information received. • Any follow-on investment in the project will be subject to OPIC review and clearance prior to the date of such further investment. <p>At OPIC's discretion, further review may occur within a reasonable time period following the date of investment. Possible outcomes of this review are:</p> <ul style="list-style-type: none"> • <u>Class I</u> – The project is satisfactory and no further conditions are placed on the project. • <u>Class II</u> – The project poses certain non-critical environmental, health, or safety issues. A remediation plan must be developed and implemented. No further fund investment in the project will be authorized prior to development of the remediation plan. • <u>Class III</u> – The project poses unreasonable or major environmental, health, or safety hazards. No further investments in the project are authorized and divestment must occur. <p><u>Investments that do not initially meet World Bank Group guidelines:</u> Following OPIC review, investments may be authorized for follow-on investments in Class I and Class II Non-Sensitive Small Projects that do not initially meet the guidelines, under the following terms and conditions:</p> <ul style="list-style-type: none"> ○ A detailed and time-sensitive remediation plan is developed. ○ The remediation plan is incorporated into the fund's investment arrangements with the portfolio company in a manner that provides the fund with legally binding enforcement rights in the event of material non-compliance. ○ At a minimum, the fund reports annually to OPIC regarding implementation of the remediation plan. <p><u>In the event of material non-compliance with the approved remediation plan,</u> OPIC will require the fund to implement its enforcement rights or divest its position. Divestment must take place as soon as possible, taking into account liquidity, market constraints, and fiduciary responsibilities.</p>
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Standards: Human Rights

General	
<p>Generally</p> <p>FAA §116 / 22 U.S.C. §2151n</p> <p>These provisions are incorporated by reference in FAA §239(i) / 22 U.S.C. §2199(i)</p>	<ul style="list-style-type: none"> • OPIC shall take into account in the conduct of its programs in a country, in consultation with the Secretary of State, all available information about observance of and respect for human rights and fundamental freedoms in such country and the effect the operation of such programs will have on human rights and fundamental freedoms in such country. • The provisions of FAA §116 (22 U.S.C §2151n) shall apply to any insurance, reinsurance, guaranty, or loan issued by OPIC for projects in a country. (FAA §239(i)) <p>FAA §116 / 22 USC §2151n requirements:</p> <ul style="list-style-type: none"> • OPIC may not provide assistance to the government of any country engaging in a consistent pattern of gross violations of internationally recognized human rights, including: <ul style="list-style-type: none"> ○ Torture or cruel, inhuman, or degrading treatment or punishment; ○ Prolonged detention without charges; ○ Causing the disappearance of persons by the abduction and clandestine detention of those persons; ○ Other flagrant denial of the right to life, liberty, and the security of person. (FAA §116(a)) • <u>Factors considered</u> in determining whether a government has engaged in a consistent pattern of gross violations of internationally recognized human rights: <ul style="list-style-type: none"> ○ The extent of cooperation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations, including the International Committee of the Red Cross, or groups or persons acting under the authority of the United Nations or the Organization of American States. ○ Specific actions which have been taken by the President or the Congress relating to multilateral or security assistance to a less developed country because of the human rights practices or policies of such country. ○ Whether the government has engaged in or tolerated particularly severe violations of religious freedom or has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken. (FAA §116(c)) • <u>Exceptions: OPIC may waive human rights concerns if:</u> <ul style="list-style-type: none"> ○ The assistance directly benefits needy people. (Note: If OPIC uses this exception, the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives may require OPIC to submit in writing information demonstrating that OPIC assistance will directly benefit needy persons. (FAA §116(a)) Also, national security interests require a waiver. (FAA §239(i)) • <u>Children:</u> No assistance may be provided to any government failing to take appropriate and adequate measures, within their means, to protect children from exploitation, abuse, or forced conscription into military or paramilitary services. (FAA §116(b))

Standards: Human Rights

General

<p>Worker Rights</p> <p>FAA §231A / 22 U.S.C. §2191a</p> <p>19 U.S.C. §2467(4) and (6), incorporated by reference in FAA §231A / 22 U.S.C. §2191a</p> <p>19 U.S.C. §2464, incorporated by reference in FAA §231A / 22 U.S.C. §2191a</p>	<ul style="list-style-type: none"> • OPIC may insure, reinsure, guarantee, or finance a project only if the host country is taking steps to adopt and implement laws that extend internationally recognized worker rights. (FAA §231A(a)(1)) • Exception: OPIC may provide assistance regardless of a country's worker rights issues if it would be in the national economic interest of the United States. If OPIC uses this exception, the decision and the reasons therefore must be reported in writing to Congress. (FAA §231A(a)(3)) • The term "internationally recognized worker rights" includes: <ul style="list-style-type: none"> ○ The right of association; ○ The right to organize and bargain collectively; ○ A prohibition on the use of any form of forced or compulsory labor; ○ Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; ○ A minimum age for the employment of children; ○ A prohibition on the worst forms of child labor, meaning: <ul style="list-style-type: none"> • All forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; • The use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes; • The use, procuring, or offering of a child for illicit activities--in particular, for the production and trafficking of drugs; and • Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. This work shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved. (19 U.S.C. §2467(4) and (6)) • Reports: In making the determination as to whether the host country is taking steps to adopt and implement laws that extend internationally recognized human rights, OPIC shall use the reports submitted to Congress pursuant to 19 U.S.C. §2464. <ul style="list-style-type: none"> ○ Under 19 U.S.C. §2464, the President shall submit an annual report to Congress on the status of internationally recognized worker rights within each beneficiary developing country, including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor. • OPIC must include the following language, in substantially similar form, in all OPIC contracts for financial support: <p>"The investor agrees not to take actions to prevent employees of the foreign enterprise from lawfully exercising their right of association and their right to organize and bargain collectively. The investor further agrees to observe applicable laws relating to a minimum age for employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety, and not to use forced labor. The investor is not responsible under this paragraph for the actions of a foreign government." (FAA §231A(a)(1))</p>
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Standards: Human Rights**International**

<p>Human Rights Treaty Standards</p> <p>Executive Order 13107</p>	<p>As an agency of the United States, OPIC is obligated to ensure that its activities are consistent with U.S. obligations under human rights treaties and other international laws. U.S. Presidential Executive Order 13107 states that it is the policy and practice of the U.S. government to fully respect and implement human rights treaty obligations.</p> <p>Additionally, EO 13107 states that, "All executive departments and agencies shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully."</p> <p><u>Relevant international treaties the United States has ratified:</u></p> <ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Racial Discrimination (CERD) • International Covenant on Civil and Political Rights (ICCPR) • Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) • The Optional Protocol on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC) • The Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (CRC-OP-PSC)
<p>World Bank Group - International Finance Corporation Guidelines</p> <p>OPIC Environmental Handbook, Environmental Standards Section and App. G</p>	<p>Several of the IFC Performance Standards implicate human rights, including:</p> <ul style="list-style-type: none"> • Labor and Working Conditions • Community Health, Safety and Security • Land Acquisition and Involuntary Resettlement • Indigenous Peoples

Standards: General Transparency

The "FOIA," or Freedom of Information Act, is a U.S. federal law that provides for public access to U.S. government agency records, and therefore to OPIC records. Any agency records in OPIC's possession or control are subject to the FOIA. The requested records will be provided in full, unless one or more FOIA exemptions apply.

FOIA is useful to local communities using the OPIC Accountability Mechanism because it allows you to request important documents that could serve as the basis for a Compliance Review or Problem-Solving complaint. Examples include the financial agreement between OPIC and the project sponsor, an Environmental Monitoring and Management Plan, an Environmental Remediation Plan, or other related documents. Please see Appendix IV, page 54 for a sample FOIA request letter.

Open Records and U.S. Freedom of Information Act (FOIA) ⁸	
<p>Open Records Policy</p> <p>22 CFR §706.11 - §706.44</p> <p>FOIA: 5 U.S.C. §522</p> <p>2004 OPIC FOIA Transparency Statement</p> <p>See also: OPIC FOIA webpage www.opic.gov/FOIA/FOIA.htm</p>	<p>OPIC Policy: OPIC will, in accordance with FOIA, operate under a presumption in favor of disclosure of information, balancing, and appropriately protecting all interests, while placing a primary emphasis on the most responsible disclosure possible. (<i>OPIC FOIA Transparency Statement, 22 CFR §706.11(b)</i>)</p> <ul style="list-style-type: none"> • OPIC will enhance public awareness of development issues. • OPIC will enhance operations by encouraging dialogue on policies and operations, which will result in an increased flow of new and varied perspectives. • OPIC will enhance operations by ensuring effective local participation in decision-making, leading to "ownership" of decisions by involved participants, and improving project implementation and sustainability. (<i>OPIC FOIA Transparency Statement</i>) • Exception: Except as provided by law, OPIC will not disclose information submitted to OPIC in confidence without the submitter's consent. (<i>22 CFR §706.11(b)</i>) (This exception will apply to both confidential business information and confidential identities.) <p>What records must OPIC make publicly available?</p> <ul style="list-style-type: none"> • Routinely available records may be accessed by the public without a formal request, but records that are not routinely available must be formally requested under the U.S. Freedom of Information Act (FOIA). (<i>22 CFR §706.11(a)</i>) • OPIC must comply with FOIA regulations, which require U.S. agencies to search for and release most government records to any person within 20 business days of a written request. (<i>22 CFR §706.32, 5 U.S.C. §522(a)(6)(A)</i>) • OPIC will only release those records within its possession and control as of the date of the FOIA request. (<i>22 CFR §706.11(c)</i>) • OPIC will notify requesters in writing after it decides whether to release the requested records. OPIC will respond by providing the records in whole or in part, by stating that OPIC will provide the records in the future, or by referring your request to the agency that possesses the records. (<i>22 CFR §706.33</i>)

⁸ The Freedom of Information Act (FOIA) is the federal statute that establishes guidelines for public disclosure of documents and materials created and held by federal agencies. The purpose of FOIA is to increase transparency so that the public will be better informed and the government will be more accountable for its actions. FOIA, which is designated as 5 U.S.C. §552, is an umbrella statute that applies to all U.S. agencies. The agencies, in turn, create regulations that outline exactly how each particular agency will implement FOIA. These regulations are codified in the Code of Federal Regulations (CFR), which is a collection of U.S. government agency regulations. The provisions of the CFR that are relevant to OPIC and FOIA are 22 CFR Part §706 through 22 CFR Part §708.

Standards: General Transparency**General**

Development Impact Profile FAA §239(h) / 22 U.S.C. §2199(h)	<ul style="list-style-type: none">• For each project, OPIC must prepare and maintain a development impact profile consisting of data appropriate to measure the projected and actual effects of the project on economic and social development.
Board Meetings	Note: OPIC is also required to hold public Board meetings, except in certain circumstances. See 22 CFR Part 708 and FAA §231A(c) / 22 U.S.C. §2191a(c) for more detail.

Standards: General Transparency**FOIA**

<p>U.S. Freedom of Information Act (FOIA)</p> <p>5 U.S.C. §522</p> <p>22 CFR §706.11 - §706.44</p> <p>See also: OPIC FOIA webpage www.opic.gov/FOIA/FOIA.htm</p>	<p><u>A formal FOIA record request must be in writing and include:</u></p> <ul style="list-style-type: none"> • Your name and organization; • Your address and phone number; • Email address (optional, but allows for faster communication); • A reasonably specific description of the records you need. More detailed requests will be answered more quickly; • What form you would like the records to take (e.g. computer disk, paper, etc.); • Your willingness to pay the associated fees, or your willingness to pay fees up to a certain limit, or a request for a fee waiver and an explanation of why you qualify for a waiver.⁹; • A sentence expressly stating that you are making a request under FOIA. <p>(22 CFR §706.31)</p> <p>(See page 54 for a sample letter)</p>		
	<table border="1"> <tr> <td data-bbox="402 741 938 982"> <p><u>Mail FOIA record requests to:</u></p> <p>FOIA Director Overseas Private Investment Corp. 1100 New York Ave., N.W. Washington, D.C. 20527</p> <p><u>Or email:</u> FOIA@opic.gov <u>Or fax:</u> 202-408-0297, Attn: FOIA Director</p> </td><td data-bbox="946 741 1453 982"> <p><u>To request general information:</u></p> <ul style="list-style-type: none"> • Email info@opic.gov • Call the OPIC InfoLine at 202-336-8799 • Call 202-336-8400 and ask for the Information Officer. • To obtain documents by fax, call OPIC FactsLine at 202-336-8700. </td></tr> </table>	<p><u>Mail FOIA record requests to:</u></p> <p>FOIA Director Overseas Private Investment Corp. 1100 New York Ave., N.W. Washington, D.C. 20527</p> <p><u>Or email:</u> FOIA@opic.gov <u>Or fax:</u> 202-408-0297, Attn: FOIA Director</p>	<p><u>To request general information:</u></p> <ul style="list-style-type: none"> • Email info@opic.gov • Call the OPIC InfoLine at 202-336-8799 • Call 202-336-8400 and ask for the Information Officer. • To obtain documents by fax, call OPIC FactsLine at 202-336-8700.
<p><u>Mail FOIA record requests to:</u></p> <p>FOIA Director Overseas Private Investment Corp. 1100 New York Ave., N.W. Washington, D.C. 20527</p> <p><u>Or email:</u> FOIA@opic.gov <u>Or fax:</u> 202-408-0297, Attn: FOIA Director</p>	<p><u>To request general information:</u></p> <ul style="list-style-type: none"> • Email info@opic.gov • Call the OPIC InfoLine at 202-336-8799 • Call 202-336-8400 and ask for the Information Officer. • To obtain documents by fax, call OPIC FactsLine at 202-336-8700. 		
	<p><u>Denials:</u> If OPIC denies a FOIA request, it must provide:</p> <ul style="list-style-type: none"> • The name, title and signature of the person responsible for the denial decision; • The legal basis for the denial; • A statement that the denial may be appealed and a brief explanation of how to appeal; • An estimate of the amount of material withheld, unless the estimate would harm an interest protected by FOIA. <p>(22 CFR §706.33(a)(2))</p> <p>If OPIC denied the request because another agency has the records, OPIC must promptly refer the requester to that agency.</p> <p>(22 CFR §706.33(b))</p>		
	<p><u>FOIA Appeals:</u></p> <ul style="list-style-type: none"> • You may file an appeal within 20 business days of the date you receive a FOIA denial. • Address appeal to OPIC Vice-President and General Counsel, and mark letter "FOIA Appeal." • The letter should reasonably describe the records requested and any other pertinent information. • OPIC must send a written decision within 20 business days of the date OPIC receives the appeal, unless a maximum 10-day extension is required for unusual circumstances. If the appeal is granted, OPIC will make the records promptly available. If the appeal is denied, OPIC must explain the rationale for upholding the denial. When the administrative appeals process has been exhausted, a requester may turn to the U.S. federal court system and attempt to obtain relief. (22 CFR §706.36) 		

⁹ **FOIA Fees and Fee Waivers** (22 CFR §706.34) Search fees - \$16 per hour, Review fees - \$35 per hour, Duplication costs - \$.15 per page of photocopies, and direct costs for all other media. **Fee Waiver:** OPIC may grant a fee waiver if the FOIA information disclosure is in the public interest because it is likely to contribute significantly to public understanding of OPIC's operations, and is not primarily in the commercial interest of the FOIA requester. (22 CFR §706.35) See Appendix V, page 55 for a list of factors OPIC uses to determine whether disclosure is in the public interest.

Standards: Additional Considerations

Claims Settlement FAA §237(i) / 22 U.S.C. §2197(i)	<ul style="list-style-type: none"> Claims arising as a result of insurance, reinsurance, or guaranty operations under this subpart or under predecessor guaranty authority may be settled, and disputes arising as a result thereof may be arbitrated with the consent of the parties, on such terms and conditions as OPIC may determine. Payment made pursuant to any such settlement, or as a result of an arbitration award, shall be final and conclusive notwithstanding any other provision of law.
Presumption of Compliance FAA §237(j) / 22 U.S.C. §2197(j)	<ul style="list-style-type: none"> Each guaranty contract executed by such officer or officers as may be designated by the Board shall be conclusively presumed to be issued in compliance with the requirements of OPIC's authorizing statute.
Fraud Penalties FAA §237(n) / 22 U.S.C. §2197(n)	<ul style="list-style-type: none"> Whoever knowingly makes any false statement or report or willfully overvalues any land, property, or security, for the purpose of influencing in any way the action of OPIC with respect to any insurance, reinsurance, guarantee, loan, equity investment or other activity of OPIC or any change or extension of any such insurance, reinsurance, guarantee, loan, equity investment, or activity, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefore, shall be fined not more than \$1 million or imprisoned not more than 30 years, or both.
Best Practices OPIC Environmental Handbook, Environmental Standards	<ul style="list-style-type: none"> OPIC takes into account an applicant's track record of material compliance with U.S. domestic and foreign environmental and occupational health and safety laws and regulations in its environmental assessment process. While evidence of material noncompliance is not in itself grounds for declining support, such information helps to identify environmental and occupational health and safety issues that merit particular attention during the Environmental Assessment process, contract conditions and monitoring.
Annual Report FAA §240A / 22 U.S.C. §2200a FAA §240(b) / 22 U.S.C. §2200(b)	<ul style="list-style-type: none"> OPIC must submit a report to Congress at the end of each fiscal year that includes: <ul style="list-style-type: none"> An assessment of the economic and social development impact of OPIC projects. The extent to which OPIC's operations complement or are compatible with other development assistance programs of the United States or other donors. A description of any project that OPIC refused support on human rights grounds. A description of any project OPIC provided support in the face of human rights violations because the project either directly benefited needy persons or was required by national security interests. (FAA §240A) The report must also include data collected on the involvement of minority- and women-owned businesses in OPIC projects--data that quantifies the effectiveness of OPIC's outreach activities to these businesses. (FAA §240(b))
Financial Audit FAA §239(c) / 22 U.S.C. §2199(c)	<ul style="list-style-type: none"> OPIC must allow an independent certified public accountant to perform a financial and compliance audit of its financial statements at least once every three years. The Government Accountability Office may review the audit and may conduct its own audit upon Congressional request or if the GAO considers a GAO audit necessary.
Inspector General FAA §239(e) / 22 U.S.C. 2199(e)	<ul style="list-style-type: none"> The Inspector General of the Agency for International Development may conduct reviews, investigations, and inspections of all phases of all OPIC operations and activities and report to the OPIC Board of Directors.
Policy Guidelines FAA §239(k) / 22 U.S.C. 2199(k)	<ul style="list-style-type: none"> OPIC must publish, and make available to project applicants, policy guidelines relating to OPIC programs.

Part III – Environmental Screening and Assessment Procedures

Environmental Screening

OPIC uses its Environmental Screening process to determine what level of Environmental Assessment is appropriate for each particular project. Environmental Screening attempts to identify the potential adverse environmental impacts of a proposed project.

During the screening process, OPIC projects are sorted into categories by level of potential adverse environmental impacts. Projects that will likely significantly impact the environment are labeled “Category A” projects, and receive in-depth environmental assessments. Other categories (B, C, D, and E) receive less stringent environmental assessments. “Category F” projects are prohibited. Please see Appendix VII on pages 57-60 for examples of projects from each category.

OPIC Environmental Screening Categories <i>Source: OPIC Environmental Handbook, Environmental Screening Section</i>	
Category A	Projects likely to have significant adverse environmental impacts that are sensitive (e.g. irreversible, affect sensitive ecosystems, involve involuntary resettlement, etc.), diverse, or unprecedented.
Category B	Projects likely to have adverse environmental impacts that are less significant than Category A impacts. This means that few if any of the impacts are likely to be irreversible, the impacts are site-specific, and that mitigating measures may be designed more readily than for Category A projects.
Category C	Projects likely to have minimal or no adverse environmental impacts.
Category D	For assistance to financial intermediaries that, in turn, make investments in or provide financing (loans, leases, etc.) to identifiable sub-projects or enterprises (“subprojects”) engaged in activities within Categories A and B. OPIC screens these sub-projects to determine the type of environmental review required, and proceeds with either Category A or B assessment.
Category E	For small-scale, stand-alone business ventures that have demonstrable environmentally beneficial impacts. Normally exempt from environmental assessment.
Category F	Prohibited projects, due to major or unreasonable adverse impact on the environment, health, or safety.

Environmental Assessment

Environmental Assessment

Environmental Assessment (EA) is a tool OPIC uses to evaluate a project's environmental and social impacts and to identify ways to mitigate those impacts. The term "Environmental Assessment" is an umbrella term for a number of different environmental investigation and reporting procedures, any combination of which could make up a single Environmental Assessment.

Different types of Environmental Assessment are conducted by the project sponsor depending on the nature of the project.

An Environmental Assessment may include one or more of the following components:

- EIA – Environmental Impact Assessment
- IEAU – Initial Environmental Audit
- EMMP – Environmental Management and Monitoring Plan
- MHA – Major Hazard Assessment
- ENR – Environmental Remediation Plan
- EIS – Environmental Impact Statement

See below for a detailed outline of each component

To determine whether to provide financial or insurance support, OPIC is required to provide some degree of Environmental Assessment for every proposed project, even if the degree of EA is simply determining that none is necessary. OPIC cannot provide a final commitment to a project until its Environmental Assessment is complete and OPIC determines that the environmental, health, and safety impacts of the project are acceptable. According to OPIC's authorizing statute, before approving a project, OPIC must prepare and take fully into account an environmental assessment of any proposed project significantly affecting the environment of any foreign country. For Category A projects, part of the Environmental Assessment process is a 60-day public comment period for interested parties to send OPIC comments on the project.

Once OPIC has evaluated a project's impacts, the Environmental Assessment process identifies ways to improve the project by preventing, minimizing, mitigating, remedying, or compensating for adverse impacts. These strategies for environmental protection, management, and monitoring are often included in the contract agreement between OPIC and the project sponsor as conditions of financial support. Thus, if the project sponsor fails to meet the conditions that arise as a result of the Environmental Assessment process, the project sponsor could be in breach of the financial agreement.

Environmental Assessment

Review: Environmental Screening and Assessment encompasses:

- Identification of potential adverse environmental impacts.
- Sorting projects into Category A, B, C, D, E or F by the level of probable environmental impact.
- Assessment of the potential impacts and comparison with impacts of alternative approaches.
- Design and implementation of measures and plans to avoid, minimize, mitigate, or compensate for adverse impacts.
- Design and implementation of associated management and monitoring measures.
- Inclusion of environmental management and monitoring measures as conditions of project support.

The Environmental Assessment components that have been included as environmental conditions in the financial agreement between OPIC and the project sponsor are part of a binding contract. Thus, if any of these conditions are not met, this non-compliance may serve as the basis for a Compliance Review or Problem-Solving complaint. Obtaining these Environmental Assessment documents from OPIC may be difficult, but it is worthwhile to try. You may use the FOIA procedures detailed on page 40 to request the documents pertinent to your complaint.

Note: It is OPIC's policy that if a project sponsor fails to provide OPIC with an EIA or IEAU for a Category A project or with adequate information about a Category B project to conduct a review sufficient to determine project eligibility on environmental grounds, OPIC will decline support for the project.

Environmental Assessment

Components

Environmental Assessment Components

The following types of Environmental Assessment components are all potential parts of an Environmental Assessment. The individual combination of site, industry, and project scope will determine which components are required. A full Environmental Assessment may include one or more of the following component documents, and each document associated with a project could potentially serve as the basis of an Accountability Mechanism complaint if it has been incorporated into the financial agreement between OPIC and the project sponsor.

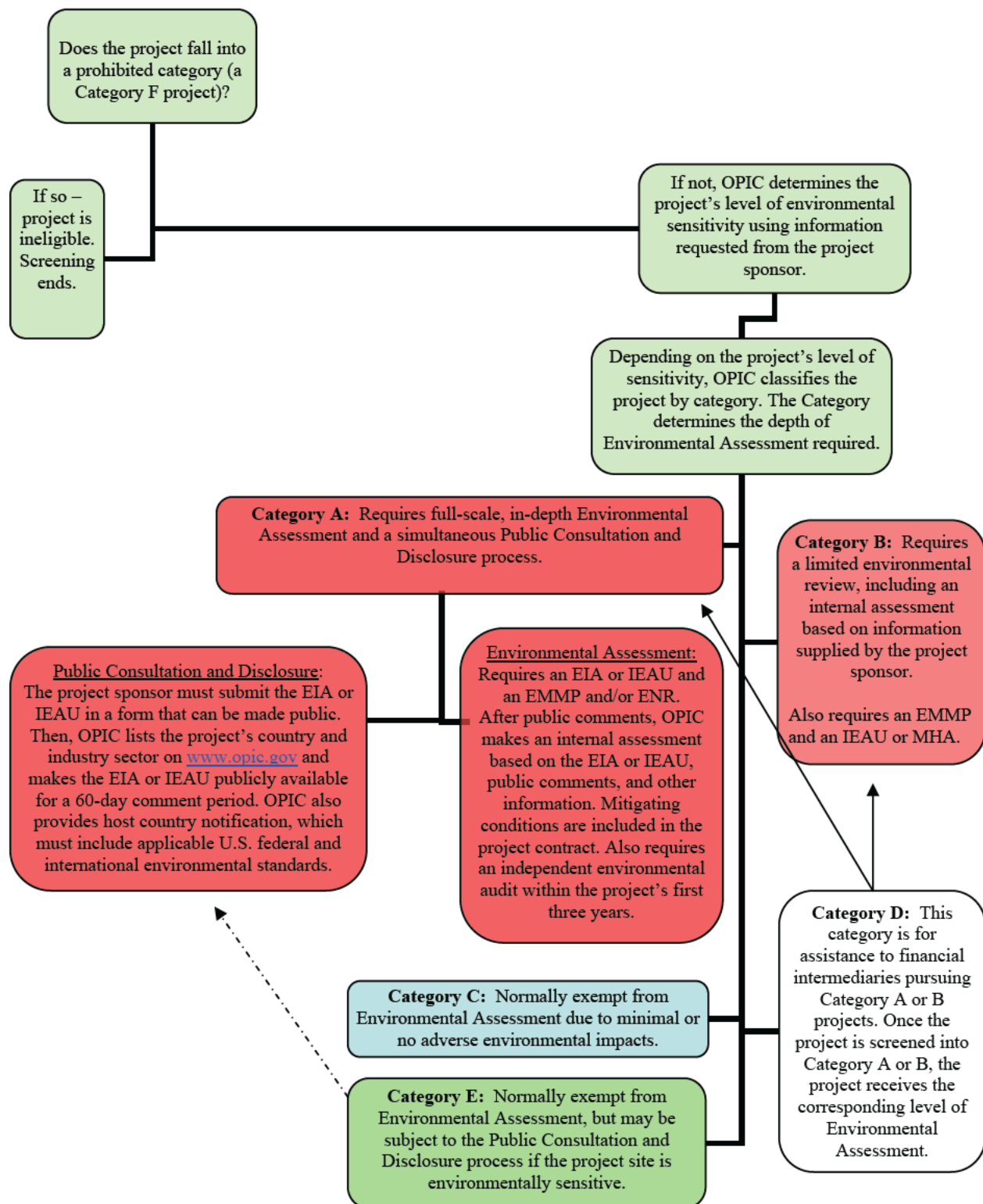
<p>Environmental Impact Assessment</p> <p>(EIA)</p> <p>Only required for Category A projects</p>	<p>Definition: Comprehensive assessment of the diverse impacts of a project on the natural and ecological impacts on the human environment.</p> <p>Includes:</p> <ul style="list-style-type: none"> • Detailed description of pre-existing conditions ("baseline assessment"); • All project activities having a potential environmental impact (from pre-construction through decommissioning and site reclamation); • The net impacts of the project, taking alternative mitigating measures into account; • The relationship of the project to the natural and ecological impacts on the human environment in the affected area and the cumulative impacts of those activities. <p>A full-scale EIA is only required for Category A projects. Also, an EMMP, IEAU or ENR may be included as sub-parts of an EIA.</p>
<p>Initial Environmental Audit</p> <p>(IEAU)</p>	<p>Definition: Assessment of environmental and related human impacts of pre-existing or ongoing activities. It is designed to identify pre-existing adverse environmental, health, or safety conditions that could affect future impacts from the facility or site.</p> <p>Projects may be subject to an IEAU if the investment involves the acquisition of a pre-existing facility or a site on which industrial activity previously occurred.</p>
<p>Major Hazard Assessment</p> <p>(MHA)</p>	<p>Definition: An analytical tool used for identifying, analyzing and controlling potential major hazards to human health and safety resulting from storage and processing of toxic and hazardous substances. It is a specialized form of EA designed to identify and assess the risks of catastrophic events resulting from the operation of an industrial facility.</p> <p>An MHA is required no later than the commencement of project operations.</p>

Environmental Assessment**Components**

<p>Environment Management and Monitoring Plan (EMMP)</p> <p>(Also known as Environmental Action Plan (EAP))</p>	<p>Definition: A systematic program designed to prevent, mitigate and monitor anticipated environmental and related human impacts of prospective and ongoing activities. An EMMP is designed to specify in detail the actions – both technical and managerial – that the applicant or sponsor will undertake in order to mitigate anticipated adverse impacts of the project on the environment, health, and safety.</p> <p>An EMMP also describes the technology and methodology used to monitor the actual impacts of the project on the environment and the standards and procedures to be used for adjusting mitigating measures as necessary to maintain impacts within an acceptable range.</p>
<p>Environmental Remediation Plan</p> <p>(ENR)</p>	<p>Definition: Systematic program designed to reverse adverse environmental impacts of previous activities at a site.</p> <p>An ENR is necessary if the project involves the remediation of environmentally adverse conditions at the site.</p>
<p>Environmental Impact Statement</p> <p>Executive Order 12114</p> <p>FAA §117(c)(1)(A) / 22 U.S.C. §2151p(c)(1)(A)</p>	<p>Explainer:</p> <p>Environmental Impact Statements are required less often than any of the above Environmental Assessment components because Environmental Impact Statements are only required if an OPIC project significantly affects the environment of the global commons or the environment of the U.S. Most OPIC projects significantly affect only the environment of the host country or nearby host countries.</p> <p>Definition: A comprehensive analytical effort designed to anticipate environmental impacts of major federal actions. An EIS is only necessary if a major federal action significantly affects the environment of the global commons outside the jurisdiction of any nation (e.g. the oceans or Antarctica) or the environment of the United States.</p> <p>An EIS is required if:</p> <ul style="list-style-type: none"> • The action affects the global commons outside the jurisdiction of any nation • The action affects the environment of the United States, OR • The action has a “significant impact” on the environment. <ul style="list-style-type: none"> ○ “Significant impact” is defined as an action that does significant harm to the environment even though on balance the action is believed to result in beneficial effects to the environment. ○ Also, the cumulative impacts of several large projects could conceivably have an impact on extraterritorial waters or the atmosphere sufficient to trigger the significant impact requirement. <p>Format: If an EIS is required, it should be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives.</p>

Environmental Screening and Assessment

Decision Tree



Part IV – Appendices

- I. Sample Complaint Outline**
- II. Compliance Review Checklist**
- III. Problem-Solving Checklist**

- IV. Sample FOIA Letter**
- V. 22 CFR §706.35 – Standards for information disclosure in the public interest**

- VI. FAA to U.S.C. Conversion Chart**
- VII. Examples of Category A, B, C, D, E, and F Projects**
- VIII. World Bank Group Industry Guidelines, Pollution and Prevention Handbook**

Appendix I: Sample Complaint Outline

_____ [date]

_____ [name]

Director, Office of Accountability
U.S. Overseas Private Investment Corporation
1100 New York Ave., NW
Washington, D.C. 20527

RE: Request for _____ [Compliance Review OR Problem-Solving]

Dear Director _____,

I am _____ [a member or authorized representative¹⁰ of the local community that is or is likely to be, affected by an OPIC supported project]. I am submitting a request for _____ [Compliance Review OR Problem Solving] to the OPIC Accountability Mechanism.

I _____ [do/ do not] request confidentiality for this complaint.¹¹

My name is _____, and my contact information is:

_____ [address]

_____ [country]

_____ [optional: phone/email]

The project impacting the community is a _____ type of project located at _____ and is sponsored by[_____]. This project is currently being supported by OPIC.

Summary of Complaint:¹²

¹⁰ Clearly identify the local community being represented. Also, include evidence showing you have legitimate authority to make this complaint.

¹¹ If confidentiality is requested, state a *reason* for that request.

¹² In one or two paragraphs, sum up your reasons for submitting a complaint.

[Required for Compliance Review petitions]

[Optional for Problem-Solving petitions]

Laws, Policies, or Procedures Violated by OPIC:¹³

- _____ *[law]*
- _____ *[policy]*
- _____ *[procedure]*
- _____ *[financial agreement between OPIC and project sponsor]*
- _____ *[environmental conditions, EMMP, or ENR]*

Statement of Impact: ¹⁴

[Required for Compliance Review petitions]

[Optional for Problem-Solving petitions]

Violations: ¹⁵

- Violation of _____ Law:

- Violation of _____ Policy:

- Violation of _____ *[etc.]* :

[For Problem-Solving petitions ONLY--]

Resolution Efforts: ¹⁶

¹³ List all that you believe have been violated.

¹⁴ This is the body of the Complaint: thoroughly explain the negative effects the project is currently having (or will have) on the community. Be explicit and give concrete examples. Use as many paragraphs as necessary.

¹⁵ List each violation with an explanation of relevant facts and evidence. Use as many paragraphs as necessary. Footnote any attachments or outside sources of information.

¹⁶ State that you and/or the community have made good faith efforts to bring the problem to OPIC's attention and/or to the attention of the sponsor or local community. Include dates and times of contact and the identities of parties involved in the effort. Include any additional information about resolution efforts that have been made and attach any evidence of these efforts.

[Required for Problem-Solving, AND recommended for Compliance Review--]

Action Requested: ¹⁷

Thank you for your attention to this matter.

Sincerely,

_____ *[name]*

[Appendices (if any)]

¹⁷ Give a precise statement of how you would like to see the problem(s) resolved, and include concrete desired results.

Appendix II: Compliance Review Complaint Checklist

- ☐ Name(s) and contact information for community member(s).
- ☐ Project Information--
 - Nature and location of project,
 - Identity of project sponsor.
- ☐ A statement that the project is currently supported by OPIC.
- ☐ Statement of Impact explaining the project's negative effects on the community.

- ☐ Optional: OPIC laws, policies, or procedures OPIC has not followed.
- ☐ Optional: Confidentiality request and reason for the request.
- ☐ Optional: Authorized representative--
 - Name and contact information,
 - Clear identification of the people for whom complaint is made,
 - Explicit evidence showing the representative has the authority to make a complaint.

Appendix III: Problem-Solving Complaint Checklist

- ☐ Name(s) and contact information for community member(s).
- ☐ Project Information--
 - Nature and location of project,
 - Identity of project sponsor,
- ☐ A statement that the project is currently supported by OPIC.
- ☐ Statement of Impact explaining the project's negative effects on the community.

- ☐ Statement of efforts to resolve the problem, including:
 - Identity of parties involved in the efforts.
 - Relevant dates and times of these efforts.
 - Any contact with the project sponsor, OPIC, or the U.S. government.
- ☐ A precise statement of how the complainants would like to see the problem resolved.

- ☐ Optional: OPIC laws, policies, or procedures OPIC has not followed.
- ☐ Optional: Confidentiality request and reason for the request.
- ☐ Optional: Authorized representative--
 - Name and contact information,
 - Clear identification of the people for whom complaint is made,
 - Explicit evidence showing the representative has the authority to make a complaint.

Appendix IV: Freedom of Information Act Request Letter

FOIA Director
Overseas Private Investment Corp.
1100 New York Ave., N.W.
Washington, D.C. 20527

Re: Freedom of Information Act Request

Dear OPIC FOIA Director:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible].

In order to help to determine my status to assess fees, you should know that I am an individual seeking information for personal use and not for a commercial use.

[Optional] I am willing to pay fees for this request up to a maximum of \$____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. [Include a specific explanation.]

Thank you for your consideration of this request.

Sincerely,

Name
Address
City, State, Zip Code
Telephone number [Optional]

Appendix V: §706.35 When will OPIC reduce or waive fees?

(a) *Waiver.* In accordance with the FOIA's fee waiver provisions, OPIC will furnish records to you without charge or at a reduced charge if disclosure of the information you request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in your commercial interest. In determining whether a fee waiver is appropriate, OPIC will consider the following factors:

- (1) Whether the subject of the requested records concerns the operations or activities of the government;
- (2) Whether disclosure of the requested information is likely to contribute significantly to public understanding of government operations or activities;
- (3) Whether you have the intention and ability to disseminate the information to the public;
- (4) Whether the information is already in the public domain;
- (5) Whether you have a commercial interest that would be furthered by the disclosure; and, if so,
- (6) Whether the magnitude of your identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in your commercial interest.

(b) *Justification.* In all cases, you have the burden of presenting sufficient evidence or information to justify the requested fee waiver or reduction.

(c) *Inspection.* You may come to OPIC's offices to inspect any releasable records that you requested without charge to you except for any search, review, and/or duplication fees that are otherwise payable. *(If it is impossible to partner with somebody in Washington, D.C., to do this, the complainant may explain that this option is impossible and that, therefore, OPIC must send copies of the requested documents overseas.)*

(d) *Other provisions —*

(1) *Aggregating requests.* When OPIC reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, OPIC will aggregate any such requests and charge accordingly.

(2) *Remittances.* All payments under this Part must be in the form of a check or a bank draft denominated in U.S. currency. Checks should be made payable to the order of United States Treasury and mailed to the OPIC FOIA Office.

Appendix VI: Foreign Assistance Act and United States Code Conversion Chart

The chart below shows the most relevant sections of the Foreign Assistance Act and the corresponding United States Code designations.

Foreign Assistance Act (Pub.L. 87-195, 75 Stat. 424)	United States Code Title 22, Ch. 32, Subchapter I	Section Subject
Environmental and Human Rights Provisions Incorporated By Reference in OPIC Authorizing Statutes		
§116	22 U.S.C. §2151n	Human Rights and Development Assistance
§117	22 U.S.C. §2151p	Environmental and Natural Resources
§118	22 U.S.C. §2151p-1	Tropical Forests
§119	22 U.S.C. §2151q	Endangered Species
OPIC Authorizing Statutes		
§231	22 U.S.C. §2191	Creation and Function of the Corporation
§231A	22 U.S.C. §2191a	Additional Requirements
§232	22 U.S.C. §2192	Capital of the Corporation
§233	22 U.S.C. §2193	Organization and Management
§234	22 U.S.C. §2194	Investment Insurance and Other Programs
(1981 amendment, no corresponding FAA provision)	22 U.S.C. §2194a	Contract Authority; Specific Authorization in Appropriation Acts Required
§234A	22 U.S.C. §2194b	Enhancing Private Political Risk Insurance Industry
§235	22 U.S.C. §2195	Issuing authority, Direct Investment Authority and Reserves
§236	22 U.S.C. §2196	Income and Revenues
§237	22 U.S.C. §2197	General Provisions Relating to Insurance, Guaranty, Financing, and Reinsurance Programs
§238	22 U.S.C. §2198	Definitions
§239	22 U.S.C. §2199	General Provisions and Powers
§240	22 U.S.C. §2200	Small Business Development in Less Developed Friendly Countries
§240A	22 U.S.C. §2200a	Report to Congress
§240B	22 U.S.C. §2200b	Prohibition on Noncompetitive Awarding of Insurance Contracts on OPIC Supported Exports

Appendix VII: Examples of Projects in Categories A, B, C, D, E, and F

<p>Examples of Category A projects</p> <p>OPIC Environmental Handbook, App. E</p>	<p><u>Industrial categories</u></p> <p>A. Large-scale industrial plants;</p> <p>B. Industrial estates;</p> <p>C. Crude oil refineries;</p> <p>D. Large thermal power projects (200 megawatts or more);</p> <p>E. Major installations for initial smelting of cast iron and steel and production of non-ferrous metals;</p> <p>F. Chemicals--</p> <ol style="list-style-type: none"> 1. manufacture and transportation of pesticides, 2. manufacture and transportation of hazardous or toxic chemicals or other materials; <p>G. All projects which pose potential serious occupational or health risks;</p> <p>H. Transportation infrastructure--</p> <ol style="list-style-type: none"> 1. roadways, 2. railroads, 3. airports (runway length of 2,100 meters or more), 4. large port and harbor developments, 5. inland waterways and ports that permit passage of vessels of over 1,350 tons; <p>I. Major oil and gas developments;</p> <p>J. Oil and gas pipelines;</p> <p>K. Disposal of toxic or dangerous wastes--</p> <ol style="list-style-type: none"> 1. incineration, 2. chemical treatment; <p>L. Landfill;</p> <p>M. Construction or significant expansion of dams and reservoirs not otherwise prohibited;</p> <p>N. Pulp and paper manufacturing;</p> <p>O. Mining;</p> <p>P. Offshore hydrocarbon production;</p> <p>Q. Major storage of petroleum, petrochemical and chemical products;</p> <p>R. Forestry/large scale logging;</p> <p>S. Large scale wastewater treatment;</p> <p>T. Domestic solid waste processing facilities;</p> <p>U. Large-scale tourism development;</p> <p>V. Large-scale power transmission;</p> <p>W. Large-scale reclamation;</p> <p>X. Large-scale agriculture involving the intensification or development of previously undisturbed land;</p> <p>Y. All projects with potentially major impacts on people or serious socioeconomic concerns;</p> <p>Z. Projects, not categorically prohibited, but located in or sufficiently near sensitive locations of national or regional importance to have perceptible environmental impacts on:</p> <ol style="list-style-type: none"> 1. wetlands 2. areas of archeological significance 4. areas prone to erosion and/or desertification 5. temperate/boreal forests 6. coral reefs 7. mangrove swamps 8. nationally-designated seashore areas 9. managed resource protected areas, protected landscape/seascape (IUCN
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	categories V and VI) as defined by IUCN's Guidelines for Protected Area Management Categories; additionally, these projects must meet IUCN's management objectives and follow the spirit of IUCN definitions.
Examples of Category B projects	<ul style="list-style-type: none"> • Agriculture; • Electrical distribution; • Electronics; • Food processing; • Light manufacturing; • Telecommunications (involving infrastructure such as new telephone lines with rights of way and towers, or that manufacture telecommunications equipment); • Textiles; • Tourism.
Examples of Category C projects	<ul style="list-style-type: none"> • Branch banking; • Computer software development; • Telecommunications (involving privatization of existing service or other projects involving no infrastructure); • Bid bonds (a specialized type of political risk insurance that OPIC provides to companies that are bidding on investment opportunities);
Category D – fits into either Category A or B	<ul style="list-style-type: none"> • Financial intermediaries that make investments in or provide financing (loans, leases, etc.) to identifiable projects or enterprises (“subprojects”) engaged in activities within Categories A and B. • OPIC screens these subprojects to determine the type of environmental review required. • <u>Taken into account</u> <ul style="list-style-type: none"> • Nature and size of the financial intermediary’s involvement in the subproject; • Expedited reviews are conducted for Category B subprojects involving less than \$5 million in investment, subject to further review if the financial intermediary proceeds with additional investments in the same subproject.
Category E	<p>Small-scale, stand-alone business ventures that have demonstrable environmentally beneficial impacts.</p> <ul style="list-style-type: none"> ▪ May seek to promote conservation of natural ecosystems or biological diversity, and attempt to involve local indigenous peoples and non-governmental organizations in the management process. ▪ Ecotourism projects. ▪ Certain Category E projects may be subject to OPIC public disclosure and consultation processes due to site sensitivity.
Categorical Prohibitions (Category F) OPIC Environmental Handbook, App. F and Environmental Assessment Section	<p><u>Scope:</u> Projects that will have a major or unreasonable adverse impact on the environment, health or safety.</p> <p><u>Definitions of a Category F Project:</u></p> <ul style="list-style-type: none"> • The project will, in OPIC’s <i>a priori</i> or subsequent determination, result in impacts that violate the following statutory prohibitions: <ul style="list-style-type: none"> ○ Significant degradation of a national park, similar protected area or tropical rainforest ○ The destruction of or significant degradation in the habitat of an

	<p>endangered species; and/or</p> <ul style="list-style-type: none"> ○ Other unreasonable or major environmental, health or safety hazards (OPIC interprets “health or safety” as applying to both project employees and to the affected public living or working in the vicinity of the project.) <ul style="list-style-type: none"> ● Projects that involve conversion or degradation of critical forest areas or related critical natural habitats. <ul style="list-style-type: none"> ○ Critical forest areas are a type of natural forest that qualifies as a critical natural habitat. ○ Critical natural habitats are: <ul style="list-style-type: none"> ▪ (1) Existing internationally recognized protected areas, areas initially recognized as protected by traditional local communities (e.g., sacred groves), and sites that maintain conditions vital to the viability of protected areas (as determined by the environmental assessment procedure). ▪ (2) Sites identified on supplementary lists by authoritative sources identified by OPIC. Such sites may include areas recognized by traditional local communities (e.g., sacred groves), areas with known high suitability for biodiversity conservation and sites that are critical for vulnerable, migratory, or endangered species. Listings are based on systematic evaluations of such factors as species richness, the degree of endemism, rarity, and vulnerability of component species, representativeness, and the integrity of ecosystem processes. Identified sources may include WWF Global 200, Birdlife International Endemic Bird Areas, Conservation International Hot Spots, WRI Frontier Forests, and the World Bank.¹⁸ ● Projects involving the construction of 'large dams' that significantly and irreversibly: <ul style="list-style-type: none"> ○ (A) disrupt natural ecosystems upstream or downstream of the dam, or ○ (B) alter natural hydrology, or ○ (C) inundate large land areas, or ○ (D) impact biodiversity, or ○ (E) displace large numbers of inhabitants (5,000 persons or more), or ○ (F) impact local inhabitants' ability to earn a livelihood. ● Projects involving the commercial manufacturing of ozone-depleting substances (ODS) or the production or use of persistent organic pollutants (POPs) that are banned or scheduled to be phased out of production and use by international agreement during the life of the project. <ul style="list-style-type: none"> ○ A list of these substances and chemicals may be obtained from OPIC on request. The ODS list is defined by the Montreal Protocol (as amended) and U.S. implementing regulations. ○ The POPs prohibition refers to twelve products whose ban and phase-out are currently subject to negotiation leading to an internationally legally binding agreement by the year 2000. OPIC's prohibition is consistent with the position of the U.S. government in these negotiations with respect to
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¹⁸ (1) World Bank (1993). Ecologically sensitive sites in Africa. Volume III: South-central Africa and Indian Ocean. Compiled by the World Conservation Monitoring Centre for the World Bank, Washington, D.C., USA; (2) Dinerstein, E., et. al 1995. A Conservation Assessment of the Terrestrial Ecoregions of Latin America and the Caribbean. The World Bank, Washington D.C.; (3) MacKinnon, J. (Ed.) 1996. Review of Biodiversity conservation in the Indo-Malayan Realm. Draft. Prepared by the Asian Bureau for Conservation in collaboration with the World Conservation Monitoring Centre. The World Bank, Washington D.C.

	<p>the various categories of POPs--which include pesticides, industrial chemicals and unintentional by-products.</p> <ul style="list-style-type: none">• Projects that require resettlement of 5,000 or more persons.• Projects in or impacting natural World Heritage Sites (Areas of significant ecological value that have been internationally recognized as necessary for strict protection by members of the World Heritage Convention).• Projects in or impacting areas on the United Nations List of National Parks and Protected Areas.• Extraction or infrastructure projects in or impacting: protected area Categories I, II, III, and IV as defined by the International Union for the Conservation of Nature. (However, projects in IUCN Categories V and VI must be consistent with IUCN management objectives. Areas protected by the Ramsar Convention are considered within the appropriate IUCN Category to which they are assigned.)

Appendix VIII: World Bank Group Industry Guidelines

Source: Pollution Prevention and Abatement Handbook: <http://www.ifc.org/ifcext/enviro.nsf/Content/PPAH#Part1>

Basic Principles

- Indicators of Pollution Management
- The Environmental Assessment Process
- Types of Environmental Standards
- Principles of Waste Avoidance and Utilization
- Efficient Use of Energy
- Monitoring Environmental Quality

Setting Priorities

- Comparative Risk Assessment
- Economic Analysis of Environmental Externalities, Pages 1-3
- Economic Analysis of Environmental Externalities, Page 4
- Economic Analysis of Environmental Externalities, Pages 5-9
- The Effects of Pollution on Health: The Economic Toll
- Public Involvement in Pollution Management
- Analytical Support for Cost-Effective Pollution Control

Air Quality Management

- Airshed Models
- Removal of Lead from Gasoline
- Urban Air Quality Management

Water Quality Management

- Water Quality Models
- Integrated Wastewater Management
- Optimizing Wastewater Treatment

Industrial Pollution Management

- Developing a Culture of Industrial Environmental Compliance
- Environmental Audits in Industrial Projects
- Environmental Management Systems and ISO 14000
- Implementing Cleaner Production
- Management of Hazardous Wastes
- Pollutant Release and Transfer Registers

Financing Environment

- Environmental Funds
- Pollution Charges: Lessons from Implementation

Global and Transboundary Issues

- Greenhouse Gas Abatement and Climate Change
- Least-Cost Approaches to Reducing Acid Emission