

Overseas Private Investment Corporation

Office of Accountability

**Operational Guidelines Handbook for Problem-Solving and
Compliance Review Services**

2014

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This handbook describes the operational guidelines that OPIC's Office of Accountability applies in addressing externally generated requests for its services. The handbook is organized as follows:

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2. Glossary

Affected Stakeholders – Members of project-affected communities and workers at OPIC-supported Projects who believe they are or could be harmed by the environmental or social (including human and labor rights) effects of a Project. This term does not include commercial competitors to the Client.

Client – An organization that has executed a financing or insurance agreement with OPIC. For purposes of this definition, a Client may also be an entity that is implementing the Project in question.

Management – OPIC's Executive Staff (see www.OPIC.gov).

Office of Accountability (OA) – The OA Director, OA staff, and external consultants.

Parties – Entities that have agreed to participate in a problem-solving process, typically the Affected Stakeholders and the Client.

P&CEO – OPIC's President and Chief Executive Officer.

Project – Any transaction supported through OPIC's insurance, reinsurance, direct loans or loan guaranties, including support through financial intermediaries.

Requestor – Either the Affected Stakeholders or the Client identified in a request to the OA. Problem-solving requests may be submitted by Affected Stakeholders or Clients. Compliance review requests may be submitted by Affected Stakeholders.¹

3. Overview of the OA

3.1. Mission

The OA’s mission is to 1) provide a forum for affected stakeholders and clients to address concerns and conflicts around the environmental or social effects of Projects, and 2) evaluate and report on OPIC’s compliance with its environmental, social, human rights, and labor rights policies.

3.2. Guiding Principles

Consistent with its governing documents, the OA seeks to provide services in a manner that is:

- *fair* in its treatment of all those involved a conflict;
- *objective* by avoiding pre-conceptions and applying a rule of reason;
- *accessible and responsive* to potential Requestors;
- *transparent and predictable* in interactions, while respecting confidentiality;
- *flexible* in the tools it can mobilize to address requests;
- *independent* of OPIC’s operations; and
- *cost-effective and efficient*.

3.3. Authorities

Problem-solving authority is the authority to review and attempt to resolve conflicts between Affected Stakeholders and Clients relating to environmental and/or social aspects of Projects. This authority does not include assessing the accuracy of any allegations made about the conflict, nor does it include imposing a solution to the conflict. Rather, it seeks to create conditions such that Parties will arrive at a mutually acceptable resolution.

Compliance review authority is the authority to review and report on complaints or concerns regarding OPIC’s compliance with its governing statutes, rules, policies, and procedures related to the environmental, social, worker rights, and human rights effects of a Project. This authority does not extend to review of any entity other than OPIC, such as Clients and public authorities.

¹ OPIC’s Board and its P&CEO may also request compliance reviews. The guidelines in this handbook only address requests submitted by Affected Stakeholders and Clients.

Nor does compliance review authority extend to allocating responsibility for harm among OPIC, the Client, or others.

The two OA authorities cited above are designed to achieve positive outcomes from Projects; neither service includes the authority to unilaterally compel Client or OPIC actions.

4. Eligibility

4.1. Requests to the OA should contain the following elements:

4.1.1. The identity(ies) and contact information of the Requestors.

4.1.2. A description of the subject Project and involved Client sufficient to be identified by the OA.

4.1.3. *For requests from Affected Stakeholders*, allegations of harm resulting from or expected to result from environmental or social effects of the Project.

4.1.4. *For requests from Clients*, a description of either a dispute with Affected Stakeholders or the potential for such a dispute to emerge concerning some environmental or social aspect of the Project.

4.1.5. An indication of whether or not confidentiality is requested and the reasons why.

4.1.6. For problem-solving requests only, a statement that good faith efforts to resolve the issues have not proven satisfactory to the Requestors. This does not apply if the Requestors want the OA to keep their identities confidential due to concerns about potential negative repercussions from such efforts.

Requests may be written in English or in the language of the Requestor. Requests may be submitted via email, fax, mail, or hand delivery. Instructions for submitting requests are found on the OA's website (<http://www.opic.gov/who-we-are/office-of-accountability>). Requests may be submitted through an individual or an organization that the Requestors have explicitly authorized to act on their behalf in making the request. For example, workers at a Project might submit a request through their local labor union. Evidence must be presented of this authority. The OA will answer any questions about how to file a request.

4.2. Eligibility determination

When the OA receives a request for service, it determines the eligibility of the request. An eligibility determination is purely administrative and does not imply a judgment by the OA about the conflict. The OA uses the following criteria to determine eligibility:

4.2.1. The request contains the information listed in 4.1.

4.2.2. The request relates to a Project that OPIC is supporting or is actively considering to support at the time of the request. OPIC's support ends for eligibility purposes when its loan has been fully paid back, its insurance contract is terminated, or, in the case of financial intermediaries, when the financial intermediary is no longer invested in the project.

4.2.3. The OA will not consider the following claims to be eligible for consideration:

- matters previously considered by the OA, unless new information about them is presented in a new or updated request;
- matters malicious or trivial in nature, or aimed at gaining competitive advantage;
- procurement, contractual, or other purely commercial issues;
- allegations that the existing policy framework is inadequate;
- allegations of criminal activities; or
- personnel matters other than labor rights (e.g. freedom of association, prohibitions on child labor, unsafe working conditions, bonded labor).

After reviewing a request for eligibility, the OA will declare it to be eligible or ineligible. If the information provided is not sufficient to make this determination, the OA will request further information needed to make it complete. Upon determining eligibility, the OA will notify Affected Stakeholders, the Client, and Management in writing of its determination and reasoning.

If the request is eligible, the OA will inform Affected Stakeholders and the Client of next steps. If the request is ineligible, the OA may suggest alternative means for the Requestors to have their concerns addressed. Regardless of the request's eligibility, if it contains allegations that the Project is in violation of OPIC policy or U.S. law, the OA will refer the issues raised to Management for possible action.

5. Assessment

Once a request is deemed eligible, the OA will assess the situation. This step may include a site visit, which would have the following objectives:

- Enhance the OA's understanding of the interests of all relevant stakeholders by meeting with Affected Stakeholders, the Client, host government representatives, and others.
- Ensure that Affected Stakeholders and the Client understand the range of options available to address the concerns raised in the request. These options include the OA's

two services, OPIC's authority to engage with its Client, the Project's grievance mechanism, and in some cases public authorities.

- Elicit from the Requestors their stated preference for which services to mobilize and in what order.
- If the Requesters prefer to mobilize the OA's problem-solving service, determine the willingness of both the Affected Stakeholders and the Client to voluntarily participate in that process.

5.1. Assessment Outcomes

Based on information obtained from the assessment, the OA will inform the Affected Stakeholders, the Client, and Management in writing about the services to be mobilized and future steps.

In the course of conducting an assessment where the requestors focused only on problem solving, the OA may determine that a review of OPIC's application of relevant policies would also be useful for institutional learning. If so, the OA Director will send a memo to the P&CEO recommending he/she request a compliance review.

If the Project is being co-financed by OPIC and another financial institution that also has an accountability mechanism, the OA will seek to coordinate its services with that mechanism.

5.2. Timing

Timing guidelines for eligibility determination and assessment are as follows:

- The OA will acknowledge receiving the request within five business days.
- The OA will refer the request to Management for information needed to determine eligibility and for comment. Management is expected to respond within 10 business days.
- The OA will notify Affected Stakeholders, the Client, and Management of its eligibility determination within 20 business days of acknowledging the request, unless additional information from the Requestor or from Management is needed.
- The OA will complete its assessment within 80 business days of the eligibility determination.

The OA may extend the above time periods to allow for translation or other factors. Requestors will be notified of changes in the schedule.

6. Problem solving

The problem-solving function focuses on finding ways for the Parties to address the issues raised in a request. The OA takes no position on the validity of the allegations made, nor does it impose solutions to the conflict. It seeks to build the Parties' trust in the process and with each other in order to create conditions conducive to the resolution of the issues raised.

6.1. Communication

In order to understand the underlying interests of the Parties to a problem-solving process, it is essential for the OA to establish and maintain a direct channel of communication and relationships with all of them, regardless of whether they secure assistance from other organizations.

6.2. Timing

A problem-solving process can take different paths, and the OA will seek to be flexible and responsive to the Parties' preferences as long as there is progress towards a resolution. Accordingly, the OA may not be able to predict how many meetings will be required and how much time the problem-solving process will take at its outset.

6.3. Tools

The OA has the ability to mobilize one or more approaches to problem solving, including the following:

- Convene a mediated dialogue table or multi-stakeholder roundtable led by an independent mediation specialist;
- Conciliate between the Parties;
- Facilitate direct negotiation by the Parties to generate a solution;
- Promote joint fact-finding or commission technical studies; and
- Engage the host country government through appropriate channels.

The approach or approaches chosen will be based on consultation with the Parties. Unless otherwise agreed in advance with the Parties, OPIC bears the out-of-pocket costs associated with these approaches.

6.4. Ground rules

As an initial step in problem solving, the OA will convene the Parties to establish mutually-acceptable ground rules. If mediated dialogue is to be used, for example, ground rules may address how the Parties will engage with each other, how each Party will be represented at the

dialogue table, the meeting venue and other logistical matters, the substantive scope of the dialogue, non-intimidation, and non-disclosure of sensitive information. The OA will seek to maintain the Parties' adherence to pre-agreed ground rules during the dialogue and respect for local cultural norms as long as the integrity of the dialogue process is protected.

6.5. Training

The OA may offer training to strengthen the Parties' capacity to effectively participate in whatever problem-solving approach is to be used.

6.6. Agreements

The problem-solving process is intended to generate agreements that are mutually acceptable, reached in a non-coercive manner, tangible, and time bound. The OA will ask that the Parties put in writing and sign any agreements reached during the problem-solving process. Some actions in the agreements, such as changes to a project, may require OPIC's approval.

6.7. Termination of problem solving

The OA will terminate the problem-solving process if any Party withdraws from the process at any time for any reason. In addition, the OA reserves the right to terminate problem solving, if continuing it is unlikely to produce positive results. The OA may judge, for example, that trust cannot be established or the integrity of the process has been irreparably damaged. The OA will inform the Parties of its intentions to terminate in advance.

6.8. Monitoring

The OA will seek agreement from the Parties as to who will monitor implementation of agreements reached and how the monitoring will be conducted.

6.9. Reporting

The OA Director will report on the process and results of completed problem-solving action to the P&CEO, Management, and OPIC Board, regardless of the outcome. The OA will also prepare a final report on the problem-solving process that will be posted on the OA's website. The OA will post any agreements reached on its website unless a Party objects.

7. Compliance review

7.1. General

In a compliance review, the OA reviews and reports on OPIC's implementation of relevant environmental and social policies and procedures with respect to an individual Project or a set of Projects about which a request has been made. The compliance review generates knowledge that Management can use to improve the environmental and social sustainability of the Project(s)

under review and of future Projects. The review focuses on OPIC's actions rather than the client's performance with respect to relevant OPIC policies, contract provisions or other client actions.

7.2. Scope of review

The potential scope of an OA compliance review includes OPIC's implementation of policies and procedures governing environmental and social impacts, human rights, and worker rights. Because OPIC's policies evolve over time, the benchmark for a compliance review is the same version of the policies that OPIC applied to the subject Project. A compliance review may examine 1) whether or not the set of policies applied was appropriate and adequate to prevent harm from the project, and 2) the actions taken by OPIC to implement relevant policies (up to the time when the request for review was submitted). In particular, the review examines whether or not appropriate implementation steps were followed and whether these steps were adequate to meet the objectives of relevant policies.

Policy-related items that could potentially be reviewed constitute a hierarchy of U.S. laws, and OPIC directives, policies, and procedures, including:

- OPIC's statutory provisions such as sections 231 (n), 231A, 237 (m), 239 (g), and 239 (i) of the Foreign Assistance Act of 1961, as amended, and relevant report language.
- OPIC's 2010 Environmental and Social Policy Statement (ESPS), which encompasses much of the potential scope for compliance reviews. The ESPS contains requirements for Clients to comply with: applicable Performance Standards of the International Finance Corporation (IFC); IFC industry sector guidelines; applicable host country environmental, health, safety, and social laws; Labor Rights, which include Internationally Recognized Worker Rights (as specified Trade Act of 1974); and (for projects involving the construction and operation of dams) consideration of the core values and strategic priorities identified in the November 2000 Report of the World Commission on Dams.
- OPIC's procedures manual that explains how OPIC implements the ESPS.

7.3. Appraisal

The OA first performs an appraisal in order to determine if a full review is the appropriate response to the incoming request. In conducting the appraisal, the OA examines available project-related documentation, and discusses OPIC's role in the project with relevant OPIC staff and possibly other stakeholders. The OA will refer the request to the relevant OPIC departments with a request for comment and information. The appraisal process identifies OPIC policies that are relevant to the incoming request, but does not evaluate OPIC's compliance with them.

7.3.1. Appraisal Considerations

Several criteria help guide the OA in determining whether or not the potential benefits from the information generated by a full review merit the time and resources involved in conducting it:

- 1) How likely is it that the Project's environmental or social impacts have harmed or may harm Affected Stakeholders?
- 2) How strong are indications that the manner in which OPIC implemented its environmental and social policies and procedures is related to the harm or risk of future harm?
- 3) To what extent has OPIC been working with the Client to address the underlying causes of harm?

7.3.2. Appraisal Report

The OA will prepare an appraisal report that includes its decision whether or not to conduct a full compliance review, the reasons for that decision, and possibly observations and suggestions relating to the subject Project or to future Projects. If the OA determines that a full review is warranted, the appraisal report will outline its scope and approach.

The OA Director transmits the appraisal report to the P&CEO, Board, Requestor, and Client. If the appraisal report contains substantive observations about OPIC's role in the Project to date, the OA will request that OPIC management prepare a response to them. If a full review is not to be conducted, the OA will close the compliance review component of the case after posting the appraisal report and any Management response on the OA's website.

7.4. Full compliance review

A full compliance review provides observations and analysis regarding OPIC's application of relevant statutes, rules, policies, and procedures to the subject project. It is intended to generate knowledge that Management can use to reduce potential sources of harm and improve environmental and social outcomes by changing how OPIC applies its policies (e.g. due diligence, client engagement, clearances, and monitoring).

7.4.1. Management of review

The OA will manage the review and may participate in it directly. If OA contracts with outside consultants to assist, external experts who have provided non-OA services to OPIC in the previous 12 months will not participate in compliance reviews in order to ensure the independence of the process.

Once a review is initiated, the OA will have access to information and assistance from a variety of sources including:

- *OPIC staff and records* – Discussions with OPIC staff will be conducted in accordance with applicable law and will be organized through a designated point of contact within OPIC.
- *Technical or legal consultants* – The OA may arrange to have outside expert technical or legal advice provided in cases where it does not have all the expertise it considers necessary to make determinations in the specific case.
- *Requestor* – The OA may consult with the Requestors.
- *Client* – The OA may contact the Client directly or through an OPIC point of contact.

7.4.2. Draft compliance report

The OA Director will set forth findings from the review in a draft report, which will:

- Summarize the information that was taken into account to produce findings and identify the sources of this information;
- Provide observations as to OPIC's compliance with relevant policies and procedures, as well as the causes of any deficiencies in compliance noted; and
- If appropriate, offer recommendations for improving OPIC's engagement with the subject Project and/or systemic recommendations for improving OPIC's application of its policies to future projects.

The OA will circulate the draft report to Management for factual review and comment.

7.4.3. Final compliance report

Upon receiving comments from Management, the OA Director will finalize the report. The report is intended to provide the P&CEO with a basis for determining OPIC's compliance with relevant policies, and for deciding whether any preventive or corrective actions should be taken. The Director will transmit the final report to the P&CEO and Board, with copies to Management. Once the findings have been discussed with Management, the Director will post the report on the OA website and notify the Requestors.

7.5. Management response

The OA will request that Management prepare a written response to each project-specific or systemic recommendation contained in the compliance report. Management's response, which will be posted on the OA website, includes any follow up actions that it considers to be appropriate.

7.6. Monitoring and reporting

The OA will 1) monitor implementation of any actions to be taken by OPIC in response to a compliance review, 2) report to OPIC's P&CEO and Board on an annual basis, and 3) summarize its monitoring in the OA's annual report.

7.7. Timing guidelines

- The OA will seek to complete the appraisal report within 60 business days from initiating the compliance review phase of the case.
- The OA will request that OPIC Management respond in writing to the appraisal report within 15 business days.
- If a full review is called for, the OA will seek to complete it within six months.
- The OA will request Management to respond in writing to the draft report within 15 business days.
- The OA will request that the P&CEO respond in writing to the final report within 15 business days of submitting it to Management.

The OA will provide written notice to Requestors if these time periods are to be extended.

8. Communication and public disclosure

8.1 Language

The OA will make provisions for its communications with Requestors to be in their local language or in a language that is locally understood.

The OA will make provisions for its case-related reports or summaries thereof to be translated into the language of the requestors or into a language that is locally understood.

8.2 Registry

The OA has established a Registry on OPIC's public website to provide information on the status of cases in which it provides problem-solving or compliance review services. Information provided on the Registry includes:

- Acknowledgement of incoming requests for service
- Determinations of eligibility
- Assessment reports
- Agreements reached during problem-solving process
- Problem-solving interim and final reports
- Compliance appraisal reports
- Compliance review reports
- Management's response to compliance appraisal and review reports
- Monitoring reports
- Notices that case has been closed

8.3 Disclosure

The OA abides by OPIC's Privacy and Information Quality Guidelines. Confidential information provided to the OA in the course of problem solving and compliance review will remain confidential.

8.4 Communications

The OA will inform OPIC's Board in writing of key case milestones (e.g. eligibility determination, assessment, completion of problem solving, Management response to compliance review) as they occur, and will otherwise report to the Board at least once a year.

The OA will post an annual report of its activities, including the status of active cases, on its website.