



December 2, 2020

The Honorable Elizabeth Warren  
Committee on Banking, Housing, and Urban Affairs  
Health, Education, Labor, and Pensions  
Armed Services  
Special Committee on Aging  
United States Senate  
Washington, D.C. 20510

Dear Senator Warren:

On August 21, 2020, the U.S. International Development Finance Corporation, Office of Inspector General (DFC OIG) received from the Pandemic Response Accountability Committee (PRAC) your August 20, 2020, request to investigate DFC's decision to issue a Letter of Interest (LOI) to award a \$765 million loan to the Eastman Kodak Company (Kodak) to produce critical pharmaceutical components in support of the domestic response to COVID-19.

Based upon your request, we issued an information request to DFC on September 10, focusing on questions that were within DFC OIG's purview and authority<sup>1</sup>. We received DFC's response to our questions on October 6, 2020. As part of our due diligence, we reviewed: DFC's response to our request; DFC's legal authority to enter into an LOI with a domestic company like Kodak; DFC's rationale and methodology for considering the LOI; DFC processes, procedures, and controls for domestic LOIs; and DFC controls in place to avoid conflicts of interest and influence from lobbying that may have impacted DFC officials considering the Kodak loan. In addition, we reviewed the DFC response and documentation regarding the Kodak LOI provided to the U.S House Committee on Financial Services (dated August 14, 2020) and to the Chief investigative Counsel for the House Select Subcommittee on the Coronavirus Crisis, Committee on Oversight and Reform (dated October 1, 2020). Finally, we consulted with the PRAC, the U.S. Agency for International Development OIG, and the Security Exchange Commission and its OIG, to review the allegations and ensure there was no additional pending or

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<sup>1</sup> Specifically, DFC OIG focused our review on actions that DFC officials took in reaching its LOI decision with Kodak. We did not review conduct by Kodak or non-DFC personnel.

planned work regarding the Kodak LOI. Here is a summary of the issues for which you requested review, the DFC responses, and our OIG assessment:

#### **A. DFC Legal Authority to Sign an LOI With Kodak**

On May, 14, 2020, the President signed Executive Order 13922 to delegate to the DFC Chief Executive Officer (CEO) authority under the Defense Production Act loan program (DPA)<sup>2</sup> to:

“further expand domestic production of strategic resources needed to respond to the COVID-19 outbreak, including strengthening relevant supply chains within the United States and its territories to ensure that our country has the capacity, capability, and strong and resilient domestic industrial base necessary to respond to the COVID-19 outbreak.”

Specifically, the Executive Order delegated to the DFC CEO, the authority to:

“make loans, make provision for purchases and commitments to purchase, and take additional actions to create, maintain, protect, expand, and restore the domestic industrial base capabilities, including supply chains within the United States and its territories (“domestic supply chains”), needed to respond to the COVID-19 outbreak.”

#### **DFC Response:**

DFC responded that, under the Kodak LOI proposal, Kodak would leverage existing facilities for COVID response manufacturing using both current batch manufacturing and new continuous manufacturing processes. Once completed, the Kodak project would both meet the immediate response needs but also add resiliency to this critical U.S. supply chain.

DFC noted that their DPA loan program has a growing pipeline of dozens of applications for critical projects to develop or strengthen domestic healthcare supply chains, including pharmaceutical manufacturing, which are in various stages of DFC review. For example, on November 19, 2020, DFC announced a \$590 million loan to ApiJect System, Corp. for prefilled injectors to aid in the domestic delivery of COVID-19 vaccines.<sup>3</sup>

#### **OIG Assessment:**

DFC OIG agrees that Executive Order 13922<sup>4</sup> gives the DFC broad authority to engage in this time-limited authority to help the United States in its COVID-19 global

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<sup>2</sup> <https://www.dfc.gov/sites/default/files/media/documents/DFC-DPALoanProgramGuide.pdf>

<sup>3</sup> [DFC Press Release to Reward ApiJect \\$590 Loan for Vaccine Delivery](#)

<sup>4</sup> <https://www.federalregister.gov/documents/2020/05/19/2020-10953/delegating-authority-under-the-defense-production-act-to-the-chief-executive-officer-of-the-united>

crisis by expanding domestic industrial base capabilities through the DPA. This permits DFC, for two years, to engage with domestic companies to produce strategic resources needed to respond to the COVID-19 outbreak.

## **B. DFC Rationale and Methodology for the Kodak LOI**

Our review of the rationale for and methodology by which DFC decided to sign an LOI to Kodak included a specific inquiry into why Kodak was considered for a potential loan, given its reported lack of pharmaceutical manufacturing experience.

### **DFC Response:**

DFC emphasized in its response to OIG that no loan was issued (i.e., no Federal funds were disbursed) and that the LOI only expressed DFC's initial screening and would be "followed by standard due diligence conducted by the agency before financing is formally committed." As rationale for the decision to consider Kodak for the LOI, DFC noted that Kodak did have existing pharmaceutical manufacturing experience and that the proposed project would have been an expansion of these capabilities. During its initial screening, DFC became aware of Kodak's current pharmaceutical capabilities, its general expertise in fine chemical production, and its current manufacturing capabilities to include production of chemicals such as Isopropyl Alcohol used in hand sanitizers. Kodak facilities would be leveraged under the proposed project to quickly expand pharmaceutical manufacturing to meet the needs of the United States in the wake of the COVID-19 pandemic. Based on this information, DFC determined an LOI with Kodak was an appropriate next step.

### **OIG Assessment:**

Our review of the DFC's DPA Loan Program Guide confirmed that an LOI is one of the first steps in the DFC loan application process. The LOI implies DFC's willingness to continue discussing the (potential) loan application. DFC's procedures indicate that Kodak still had many steps to address in the loan approval process before it potentially could receive the \$765 million loan (in accordance with the DFC Defense Production Act Loan Program Guide<sup>5</sup>). For example,

- DFC still needed to decide whether the proposed transaction met minimum eligibility requirements.
- Following a successful application, the transaction would have undergone environmental, credit, and legal due diligence.
- DFC may request the applicant to retain outside consulting services to assess relevant aspects of the project/transaction. Those costs may be included in the project costs listed in the financial plan.

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<sup>5</sup> <https://www.dfc.gov/sites/default/files/media/documents/DFC-DPALoanProgramGuide.pdf>

- Following successful completion of due diligence, the project would be submitted to the DFC CEO for approval. If approved, the DFC and borrower may sign a commitment letter based on the approved term sheet.
- Following CEO approval, DFC and the borrower will enter into a finance agreement, which will establish the terms relevant to a particular transaction.

Once a finance agreement is signed, only then would Kodak have been able to submit requests for loan disbursement under the terms of the agreement.

In addition, as part of its application, Kodak proposed using its Specialty Chemicals business in Rochester, NY for the production of key starting materials and active pharmaceutical ingredients<sup>6</sup> to reduce our country's dependency on non-domestic sources for the majority of its pharmaceuticals. Currently, Kodak supplies raw materials to contract manufacturing organizations in the pharmaceutical industry, and this was also identified in Kodak's 2015 Form 10-K<sup>7</sup>; thus, Kodak does have some pharmaceutical experience. Also, American manufacturing companies have demonstrated the ability to pivot from their normal product manufacturing to healthcare, with General Motors and Ventec Life Systems being an example where a General Motors advanced electronics facility was re-engineered for medical device production, and in September delivered its 30,000<sup>th</sup> critical care ventilator<sup>8</sup>. Therefore, given Kodak's proposal highlighting its manufacturing experience, it appeared reasonable for DFC to explore an LOI with Kodak under DFC's broad authority under Executive Order 13922, which permits DFC to restore domestic production of strategic resources needed to respond to the COVID-19 outbreak and strengthen any relevant domestic supply chains<sup>9</sup>.

### **C. Process, Procedures, and Controls for Domestic LOIs**

We also reviewed the processes, procedures, and controls DFC followed in deciding to grant a domestic company like Kodak an LOI, and how domestic LOIs mirror or differ from DFC normal processes, procedures, and controls to award loans for development in emerging markets.

#### **DFC Response:**

DFC responded that it issued the LOI to Kodak per Executive Order 13922 and the delegation to the DFC CEO. The terms and conditions for these DFC DPA loans are outlined on the DFC DPA webpage and in the DFC-DPA Loan Program Guide at: <https://www.dfc.gov/dpa>.

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<sup>6</sup> Eastman Kodak Company Technical Proposal

<sup>7</sup> [https://www.annualreports.com/HostedData/AnnualReportArchive/e/NASDAQ\\_KODK\\_2015.pdf](https://www.annualreports.com/HostedData/AnnualReportArchive/e/NASDAQ_KODK_2015.pdf)

<sup>8</sup> <https://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2020/sep/0901-ventec.html>

<sup>9</sup> <https://www.dfc.gov/dpa>

DFC reiterated that the LOI is a non-binding document and is a standard part of DFC's core loan process. DFC stated that it consulted with both the U.S. Department of Health and Human Services (HHS) and the Department of Defense (DoD), as part of its DPA loan due diligence to research whether the proposed Kodak production could be used in COVID-19 finished medicine products and could be sold to current pharmaceutical manufacturers to meet the immediate need in response to COVID-19.

DFC described the process and procedures followed in considering the Kodak loan as being the same standard process for any loan made at DFC under the DPA program based off its core loan process. This included three pre-screening calls with Kodak management to discuss the proposal. Specifically, on:

- June 16, Kodak submitted its application to DPA.
- June 26, Kodak submitted an updated application with additional information requested by the assigned DPA loan officer.
- July 3, the DPA project team shared the project screening memo with DoD, HHS, and others.
- July 10, and July 16, HHS and DoD provided due diligence questions to Kodak.
- July 22, the DPA loan officer working on the Kodak application conducted a site visit and met with Kodak leadership to discuss the project.
- July 27, the parties finalized the non-binding draft term sheet; and
- July 28, DFC and Kodak signed the LOI.

DFC noted that for the loan to be finalized it would still have to be approved by a DPA credit committee and by the DFC CEO; all due diligence items would have to be finalized, including third party verification of collateral, build timelines, and financial projections; and a finance agreement would have to be reached including performance benchmarks among other conditions precedent to funds disbursement.

#### **OIG Assessment:**

From our review of the DFC's DPA Loan Program Guide and the documentation provided by DFC, we can confirm that there is a process in place and that DFC followed the applicable steps in that process in reviewing Kodak's application for a DPA program loan.

#### **D. Controls in Place to Avoid DFC Conflicts of Interests and Influence from Lobbying:**

We also reviewed the processes, procedures, and controls DFC followed to ensure that DFC was neither influenced by Kodak's lobbying efforts nor had any conflicts of interest related to the LOI decision.

## **DFC Response:**

DFC stated that it followed its normal communications process with the Kodak LOI. Specifically, either before or after applying, an applicant may request, or DFC may wish to send an LOI implying a willingness to continue discussing a possible application. DFC stated that there is no formal application for an LOI and communication around this would occur through normal communication channels, such as email, phone call, or in person.

DFC noted that its DPA loan program has a growing pipeline of dozens of applications for critical projects to develop or strengthen domestic healthcare supply chains, including pharmaceutical manufacturing. These applicants are in various stages of DFC review, which include a review of DFC employees to prevent conflicts of interest that may have affected the LOI decision process, including reminding employees at training of their ethical, impartiality, and recusal obligations under the Federal Rules of Ethical Conduct 5 C.F.R. Part 2635 and 18 U.S.C. § 208.

Regarding alleged Kodak lobbying efforts, DFC stated it did not participate in and were unaware of such activities, and that the DFC decision-making process was not influenced. DFC stated further that based on available public information, all reported dollar amounts associated with recent lobbying activities by Kodak reflected portions of the salaries of Kodak personnel who conducted outreach to governmental officials and institutions.

Further DFC stated that once the allegations of improper conduct by Kodak surfaced, it halted the loan application.

## **OIG Assessment:**

Our review of the DFC response and supporting documentation confirm that DFC followed its review and documentation requirements for considering the Kodak loan under the authority of the DPA.

We also confirmed that on August 7, 2020, DFC indefinitely halted the Kodak loan process and posted on its Twitter account that “recent allegations of wrongdoing raise serious concerns. We will not proceed further (i.e., with the Letter of Interest for the \$765 million loan to Kodak) unless these allegations are cleared.”

OIG confirmed that per Office of Government Ethics (OGE) guidance, DFC officers do file confidential or public financial disclosure forms, which are reviewed for conflicts of interest. These disclosure forms are certified by DFC Ethics Officials and an annual report is filed with OGE. We also confirmed that no requests for divestiture or waivers were sought from OGE related to the Kodak LOI. Finally, we confirmed that the USAID Hotline, which also receives DFC complaints, did not receive any complaints or allegations regarding the LOI despite extensive media coverage. Therefore, based on our review of the OGE filings, discussions with DFC

personnel, and review of the processes and procedures DFC utilized to develop the LOI, we found no evidence that there were any DFC employee conflicts of interest, or improper influence on the DFC decision making process.

Based upon the evidence we have requested and received, our review did not find any evidence of misconduct on the part of DFC officials. However, we plan to conduct a future audit to review DFC DPA projects, processes and procedures. As part of this future audit, we plan to review DFC's communication of market-sensitive announcements for financial transactions involving publicly traded companies. Currently, the General Accountability Office (GAO) announced on September 29, 2020, its intention to audit DFC activities under the DPA, and we will coordinate with GAO as appropriate. At the conclusion of GAO's audit and based upon its findings and recommendations, and in consultation with your office, DFC OIG will plan and scope this future audit to ensure a thorough review of DFC's activities under the DPA program.

My office remains committed to transparency and independent oversight of the integrity, efficiency and effectiveness in DFC's programs and operations, including the Defense Production Act loan program. We will diligently conduct audits, investigations, and reviews to ensure oversight of DFC programs and activities to prevent and detect fraud, waste, abuse, and mismanagement. If you have questions related to this review, please contact me at 202-408-6246 or [Anthony.zakel@dfc.gov](mailto:Anthony.zakel@dfc.gov).

Sincerely,



Anthony "Tony" Zakel  
Inspector General

cc: Adam Boehler, CEO, DFC  
Robert Westbrook, Executive Director, PRAC  
Ann Calvaresi Barr, Inspector General, USAID