

**US comments on
“Environmental and Social Policy Framework: Draft (December 2019)”
April 2020**

Overview. The U.S. Government welcomes the overall approach taken by the IDB in the December 2019 draft ESPF. The commitments in paragraph 1.3 are particularly important. The draft ESPF is comprehensive, well-structured, and well-written, and has served as good basis for public consultation.

At the same time, the U.S. has a number of recommendations, below. To complement the policy, the U.S. welcomes IDB’s attention to implementation of the policy, including both implementation support and capacity building for borrowers, and looks forward to discussions on the Action Plan on mainstreaming that IDB is also developing.

Overarching recommendations:

- ***Social impact assessment in PBLs.*** The U.S. strongly recommends assessment of adverse safeguards-related social impacts, even when there is not a related environmental impact, along with consultations on proposed policies. Lack of assessment of adverse social impacts for PBLs that are not derived from environmental impacts is a serious shortcoming of the draft ESPF, suggesting that environmental impacts are more important than impacts on the region’s people. Moreover, identifying and addressing potential adverse social impacts is essential to avoid harm.
- ***Exclusion List:*** The U.S. strongly recommends against excluding fossil fuels from IDB lending. Increased energy access and security is important to recipient nations, especially in light of the unprecedented COVID-19 pandemic and the economic devastation it has brought. The IDB should not exclude the possibility of such assistance.
- ***Not weakening the current suite of policies.*** The U.S. strongly recommends maintaining or updating the *Indigenous Peoples Operational Policy and Strategy*¹ and the *Gender Policy*² (minus the safeguards),³ and the *Environment and Safeguards Compliance Policy* provisions on mainstreaming environment in country assistance strategies. Establishing updated policies could be part of the Board-approved mainstreaming Action Plan. If key elements of the Indigenous Peoples Operational Policy are incorporated in the ESPF, only the Strategy would need to be maintained.

Policy Statement

¹ Operational Policy on Indigenous Peoples (OP-765) and Strategy for Indigenous Development (GN -2387-5)

² Operational Policy on Gender Equality in Development

³ OP 765, safeguards texts, pages 8-11; Gender Policy, Section IV.B, Preventive Action, paras 4.14.-4.19

- **Human rights.** The U.S. recommends an IDB commitment to do contextual risk assessment as part of its project due diligence.
- **Reprisals.** The U.S. recommends an IDB commitment on reprisals that, at a minimum, is equivalent to the commitment being considered by IDB Invest.
- **Monitoring/Supervision.** The U.S. recommends adequate timing and frequency of monitoring and supervision, so that problems are identified and rectified promptly.

Specific instruments

Borrower obligations. The U.S. recommends corresponding language in an appropriate place on Borrower obligations for the specific instruments discussed in this section.

Financial intermediaries. The U.S. recommends that: (1) FIs with Category A sub-projects are classified High Risk; (2) “higher risk sub-projects” are defined as project- and long-term corporate finance that would be considered Category A or B projects, if directly financed by IDB; (3) IDB strengthens language on sub-projects reviewed by IDB, especially Category A subprojects; and (4) IDB defines when its requirements apply to the FI’s entire portfolio or an entire asset class.

Multiple works. The U.S. recommends clarifying the E/S requirements for multiple works projects, including that individual works with moderate to significant environmental and/or social impacts are required to comply with the ESPSPs.

Technical Cooperation (TC) Operations. The U.S. recommends including TC operations related to policy reform, and requiring that they are consistent with the related ESPSP requirements.

Glossary. The U.S. recommends inclusion of or changes to a number of definitions, including cumulative impacts, stakeholders, and third parties.

Environmental and Social Performance Standards (ESPSs)

ESPS 1

- **Environmental and Social Project-Specific Framework.** The U.S. recommends clarifying the purpose, terminology and requirements.
- **Consistency and completeness of requirements across the ESPSPs.** The U.S. recommends that the requirements in ESPSP1 be maintained consistently (not reduced) in subsequent ESPSPs. For example, the full scope of impacts assessed -- direct, indirect, secondary, and cumulative impacts – should be consistent across all ESPSPs.

ESPS 2

- ***Upward Harmonization with World Bank ESS 2.*** In a number of areas, the U.S. recommends adopting the requirements of the World Bank's ESS 2, because those requirements are clearer, stronger, and/or more up-to-date than the IFC's PS 2.
- ***Disguised Employment.*** The U.S. recommends addressing disguised employment relationships used by some employers to avoid legal obligations to workers, depriving them of fundamental rights and legal entitlements.

ESPS 3

- ***Water re-use.*** For projects where water use is an issue, the U.S. recommends water re-use as a means of reducing the project's water consumption.

ESPS 4

- ***Annex on Dams.*** The U.S. recommends inclusion of an Annex on Dams, based on the World Bank's ESF Annex on Dam Safety, which also incorporates additional recommendations. If an annex on dams is not included, the U.S. recommends addressing these issues directly in the ESPF, including basin-wide and transboundary risks/impacts.

ESPS 5

- ***Definition of "voluntary."*** The U.S. recommends expanding the definition of "voluntary" beyond "a right to refuse" to also include "practical ability" to refuse.
- ***Livelihood improvement or restoration.*** The U.S. recommends that the 4th policy objective is to "improve" the livelihoods and living standards of displaced people and that restoration is a minimum standard to be applied in exceptional cases.
- ***Biodiversity offsets.*** The U.S. recommends stating that ESPS 5 applies to biodiversity offsets that are developed and implemented under ESPS 6.
- ***Government actions.*** The U.S. recommends requiring that any resettlement carried out by government prior to IDB involvement meets the requirements of ESPS 5.
- ***Early assessment.*** The U.S. recommends requiring that potential displacement be assessed early enough and adequately enough to inform a project alternatives analysis.
- ***Audits.*** The U.S. recommends requiring internal completion audits of all projects including resettlement and external audits for those with extensive resettlement.

- ***RAPs vs. Frameworks.*** The U.S. recommends a clear preference for resettlement action plans (RAPs), with Frameworks only in exceptional cases, with strong justifications.

ESPS 6

- ***Biodiversity offsets.*** The U.S. recommends requiring a Borrower to establish a plan specifying who will manage, monitor, and pay for the offset's on-going management.
- ***External experts.*** The U.S. recommends the Bank approve external experts.

ESPS 7

- ***Indigenous Peoples' recommendations.*** The U.S. recommends that the IDB adopt the joint recommendations made by Indigenous Peoples' organizations in their letter of April 20, slightly edited. Critically, these recommendations rectify ways in which the draft ESPF weakens existing policy; they also include new ideas to strengthen the ESPF.
- ***Resettlement.*** Resettling Indigenous Peoples should meet ESPS5 requirements.
- ***On-going engagement.*** The U.S. recommends that IDB consider ways to strengthen its on-going engagement with Indigenous Peoples, to better address current critical issues, and to visualize and implement a collaborative and progressive approach going forward.

ESPS 8

- ***Indigenous Peoples.*** The U.S. recommends that ESPS 8 apply to Indigenous Peoples.

ESPS 9

- ***Gender analysis - all projects.*** The U.S. recommends gender analysis for all projects.
- ***Children vs. adults.*** The U.S. recommends differentiated measures for preventing and responding to child sexual exploitation/abuse (SEA), distinct from GBV towards adults.

ESPS 10

- ***Project benefits.*** The U.S. recommends explicitly including potential project benefits for local project-affected people in the stakeholder engagement plan.
- ***Informing Project-Affected People about ICIM (MICI).*** Borrowers should be required to inform Project-Affected People about ICIM (MICI).
- ***UN Guiding Principles.*** The U.S. recommends including provisions on grievance mechanisms based on the *UN Guiding Principles on Business and Human Rights*.