Five Ways in Which Pelosi Amendment Protections will be Undermined under the Updated Safeguard Policy Framework[1]

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Vince McElhinny (vmcelhinny@bicusa.org)
Jolie Schwarz (jschwarz@bicusa.org)

The Pelosi Amendment requires the public disclosure of environmental impact assessments of individual Bank projects that pose significant potential impacts on people or the environment 120 days before the U.S. Executive Director of any MDB can vote to support a proposed project that is presented to the Board. In effect, the Amendment conditions U.S. support for individual projects on whether project-affected communities have an opportunity to understand information about the project and to voice their concerns during the period of time in the project cycle when the U.S. and other Board chairs have maximum leverage over the project. Although the Amendment has been widely credited for making environmental assessment and public access to environmental information standard practice at all multilateral development banks, the World Bank is now poised to halt that progress with an updated Safeguard Framework that fails to meet the standards set forth by Pelosi. By limiting the scope of the Safeguards, eliminating key requirements, and increasing discretion of Bank staff to unprecedented levels, the updated Framework[2] is inconsistent with both the letter and spirit of the law and contradicts its own statements on the importance of transparency, participation, and social inclusion laid out in the Framework's own vision statement.[3]

1. Scope to which the Safeguards Apply Limited to as little as 30% of total Bank lending: The proposed World Bank Safeguard Framework will exclude as much as 50% of annual Bank lending by only applying to Investment Lending.[4] Up to 40% of the remaining investment loans (low risk, recurrent or additional lending for existing loans) are to be fast tracked (with little or no application of Safeguard Policies).[5] This leaves about 30% of World Bank annual lending to which Safeguards will be fully applied. The Pelosi Amendment, however, makes no distinction between Bank instruments, requiring an assessment for "any proposal (including but not limited to any loan, credit, grant guarantee)." Therefore, whether or not the Bank applies strict disclosure requirements to a particular loan, the Pelosi Amendment will apply if that loan poses significant risk to the environment, and the U.S. will be forced to withhold support from a project if an assessment is not disclosed 120 days before the Board vote. Because the updated assessment policy applies to a much more limited portion of annual lending, the U.S. could be forced to

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[1] World Bank, "Review and Update of the World Bank's Safeguard Policies: Proposed Environmental and Social Framework (First Draft), July 30, 2014, Report No. CODE2014-0031.
[2] ESS1 ¶ 34, fn 29 states that ESCP will be an annex to the legal agreement, and will be subject to the same disclosure requirements, which are post-approval.
[3] First Draft, Introduction ¶ 16.
[4] *See* V. McElhinny, Trends in World Bank Lending (August 2013); World Bank, Medium Term Sustainability Framework (March 2014) projects Policy Lending will constitute 40% of World Bank business after FY17.
[5] World Bank OPCS, "Moving Ahead on Investment Lending Reform," Sep. 3, 2009, page 23.

oppose a large portion of the Bank's portfolio, or risk being in violation of Pelosi.

2. No disclosure minimums: Even if the scope of the updated Framework is widened, the U.S. will still have difficulty in supporting investment loans that are fully compliant with the new Framework because of the lack of clear disclosure requirements. In practice, the Bank's timing of disclosure of assessments for the highest risk projects was generally consistent with the disclosure requirements under Pelosi.[6] This is because the requirement under the current system is that EAs for projects with significant risks be made available to the public prior to appraisal, which usually takes place over the course of several months.[7] The updated Framework, however, eliminates the current requirement of EA disclosure before appraisal for significant risk projects.[8] Therefore, consultations for such projects could essentially be rendered meaningless if they are to occur either before appraisal but without the disclosure of the EA or with the EA but after project design decisions have already been taken during appraisal. Either way, the U.S. will have to withhold support from many projects that comply with the new Framework because its standards fall far short of Pelosi.

3. Environmental Management Plan de-Linked from EA: The lack of requirements for public disclosure of the new Environmental and Social Commitment Plan prior to Board approval will also constitute a challenge for the U.S. in meeting Pelosi.[9] Previously, the environmental management plan was part of the same package as the EA, but under the new framework they are de-linked and the ESCP lacks a requirement for public disclosure prior to Board approval. An EA is nothing without a risk mitigation plan—particularly if a goal of disclosure is meaningful participation of project affected communities—and are currently required to be publicly disclosed together. Under the new Framework, however, a U.S. vote for a project at the Board that lacks the prior disclosure of an ESCP along with the EA could be in violation of Pelosi, which was intended to foster meaningful participation.

4. Provisions for open-ended compliance and deferred appraisal: The Pelosi Amendment effectively requires oversight by the Board for projects with significant environmental and social risks or impacts. By doing away with minimum disclosure requirements, the new Framework pushes safeguard oversight downstream and out of the Board's reach by allowing compliance in a "manner and timeframe acceptable to the Bank."[10] This change provides unprecedented discretion to Bank staff as the appraisal of significant environmental and social risks is deferred to the implementation stage of the project cycle.[11] Rather than promoting high standards

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[6] 22 USC §262m-7(a).

[7] World Bank project cycle guidance refers to appraisal as lasting from 3-6 months, followed by negotiations, which typically last about 1-2 months.

[8] ESP ¶ 42; ESS10 ¶ 18-19.

[9] ESS1 ¶ 34, fn 29 states that ESCP will be an annex to the legal agreement, and will be subject to the same disclosure requirements, which are post-approval.

[10] ESP ¶ 7, 13.

[11] IEG (2010:xii) Safeguards and Sustainability Policies in a Changing World, showed that safeguard supervision was weak for most framework lending. "Effective supervision for FI and policy framework operations would require greater reliance on transparency, third-party review, and community monitoring." (xii)

consistent with the Pelosi Amendment, the updated Framework therefore encourages financing strategies that have less stringent protections.[12]

5. Expansive carve outs for all or significant elements of World Bank Safeguard Policies: Some exceptions in the proposed Framework could be acceptable for cases of emergency response to natural disasters or other contexts of conflict or fragility. However, the extensive exceptions available in the updated Framework could provide justification for projects like the Inga dam or other high risk operations that are allowed to proceed without the necessary protections for people and the environment. Lack of criteria for operations under such conditions could thereby reduce even further the number of eligible projects where the full weight of the Bank's environmental and social safeguards are brought to bear.[13] Under Pelosi, which does not differentiate between project contexts, the U.S. would still be forced to uphold its principles and high standards even where safeguards are waived and therefore would likely be forced to vote against more high risk operations that are inconsistent with those requirements.

[12] As is clearly inferred by the expanded use of policy lending by the World Bank (McElhinny, 2013) and corporate and financial intermediary lending by IFC (IFC CAO Audit of a Sample of IFC Investments in Third Party Financial Intermediaries (2012) and forthcoming monitoring report).
[13] ESP ¶ 19