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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510–6225

December 15, 2014

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
Main Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Lew:

We are writing to express our concerns regarding the recently published draft World Bank Environmental and Social Safeguards Framework and the Safeguard Review process by which it was developed. We believe that, if enacted, the Framework may represent a dilution of existing protections and could confuse stakeholders, make the project review and implementation processes less efficient and more costly, and ultimately result in worse outcomes for the intended beneficiaries of World Bank finance, and for the environment. We ask for your attention to this issue and for Treasury Department leadership in ensuring that World Bank safeguards are strengthened and improved, and not weakened.

On November 11, 2014, foreshadowing concerns we raise in this letter, the Asian Development Bank's (ADB) Independent Evaluation Division identified the proposed draft World Bank safeguards as "aspirational" measures which "could dilute the strength of social and environmental protections" and called for "continued use of a requirements-based safeguards system."[1]

The process the World Bank has utilized to develop the new safeguards proposal has frustrated some stakeholders. There are essential components of the draft that have not been developed or disclosed, leaving the document vague enough that it makes meaningful consultation difficult. We have also received reports of stakeholders being prevented from participating in consultations, inadequate recording of input, and a lack of tracking of the manner by which consultation results feed into the drafting process.

We are thankful that the World Bank has chosen to extend its current consultation process and are encouraged that at least one more round of consultations is yet to come. We urge you to ensure that the Bank addresses the serious shortcomings of the safeguards consultation process.

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[1] "ADB's Social and Environmental Safeguards, with Improvements, can be a Benchmark", ADB IED News Release, 11/11/14, www.adb.org. See also: Safeguards Operational Review: ADB Processes, Portfolio, Country Systems, and Financial Intermediaries, 10/16/14, www.adb.org.

We applaud the World Bank for adding language on labor fairness, climate change, the rights of persons with disabilities and the displacement of indigenous peoples, but we are concerned that the new review process philosophy appears to favor ongoing monitoring over up front requirements. One of the major components of the draft Framework is a new process that moves away from the fulfillment of safeguard requirements prior to Board approval with a call for increased monitoring of environmental and social impacts after the disbursement of funds and throughout the life of Bank-funded projects. While increased attention to monitoring is a positive step, the move towards deferred assessment and open-ended compliance raises concerns that the necessary safeguards will not be in place by the time a project begins. If projects are allowed to go forward with lower initial requirements and increased reliance on client self-reporting, we worry that safeguards could be ignored, environmental and social harms increased, and funds wasted.

We also have concerns that the Framework, as currently drafted, could --

- **weaken existing mechanisms for transparency, oversight, and accountability** by eliminating mandatory time-bound requirements, introducing vague flexibility on what safeguards will be applied to each project, and by introducing vague requirements for subprojects classified at a level of "substantial risk;"

- **reduce access by affected communities to the Bank's Inspection Panel** and increase difficulties for Inspection Panel assessment of safeguards compliance as a result of seemingly vague, flexible and non-mandatory safeguards.

- **initiate an overreliance on the borrowers' national systems and those of financial intermediaries,** in place of World Bank safeguards, while reducing the due diligence currently required under the Bank's Country Systems Safeguard which ensures that their environmental and social protections are least as strong as those of the Bank;

- **exclude from key protections thousands of people who will be displaced** by limiting the scope of the involuntary resettlement standard to displacement caused by land acquisition or restrictions on land use;

- **eliminate the requirement to allow affected communities to provide input on the environmental impact assessment** of projects with significant impacts prior to appraisal;

- **introduce a narrow application of labor standards** that excludes third party contractors, the rights of collective bargaining and freedom of association, and, unlike the IFC, EBRD and the African Development Bank, does not require compliance with the ILO core labor standards;

- **allow governments to "opt out" of applying the safeguard for indigenous peoples** which was designed, according to the Bank, to avoid "profound impacts on their lives and communities," given their "limited" ability to defend their rights or obtain "equitable access to benefits" from development initiatives, leaving communities affected by any such opt-out vulnerable to exactly these harms;

- **weaken existing protections and scope of coverage for biodiversity** and forest-dependent peoples, reversing the ban on the destruction of critical habitat, protected areas and nature reserves and removing sacred sites from critical high-level protections; and

- **fall short of international law and best practices** pertaining to, for example, indigenous peoples, human rights, labor, gender, financial intermediaries, subprojects, and climate change.

The World Bank has drafted these proposed safeguards to become more nimble and competitive, but we believe these safeguards will hurt the World Bank's efficiency, undermining its ability to compete with other development banks. The World Bank sets the bar for international development banks by raising standards, not by lowering them. By setting this bar, the Bank ensures that all borrower-nations play by the same rules and take the necessary, internationally established steps to prevent environmental and social damage. We urge you to ensure that the World Bank maintains its leadership, harmonizes with and strengthens the strongest existing safeguards, and ensures compliance with international law, rather than engaging in a race to the bottom.

The Department of Treasury has a history of successfully leading coalitions that call upon regional and national development banks to implement strong safeguards. Treasury's active role in the review of the Asian Development Bank's safeguards led to the strengthening of ADB safeguards which now include a significant number of stronger requirements than the those of the World Bank, including for consultation, gender, and financial intermediary due diligence. We expect the Treasury to demonstrate similar leadership in this case, so that the World Bank's safeguards are at least as strong as the strongest safeguards of the ADB and other multilateral financial institutions.

Mr. Secretary, we encourage you once again to exercise U.S. leadership at the World Bank to prevent dilution of existing protections and ensure that strong mandatory and legally-binding safeguards, subject to third party verification, are put in place and implemented, protecting our investments as well as our environmental and social interests.

Sincerely,

Robert Menendez
Chairman, Senate Foreign
Relations Committee

Barbara Boxer
United States Senator

Edward J. Markey
United States Senator