

Number	Section	Paragraph	Comment	OPIC Response
1	General		Human rights: While we understand that OPIC is currently drafting a human rights policy, these rights should be integrated into OPIC's environmental and social policy. At a minimum, we recommend that a human rights impact assessment is performed on each OPIC-supported project prior to project approval and that the findings of this assessment are made available to the public.	Human rights and labor issues will be addressed in the Labor and Human Rights Policy Statement, which will be released for public comment within one month. Following the public comment period on the labor and human rights policy, the two policies will be integrated into a single policy statement. In practice the pre-approval analyses and post-commitment monitoring already are integrated.
2	General		This Policy Statement should serve as a "one stop shop" for OPIC's requirements in order to eliminate confusion for an Applicant or a project-affected community. All of OPIC's requirements should be included in this Policy Statement, including its transparency policy, which is referenced in Paragraph 5.14, and its Worker Rights and Human Rights Policy, referenced in footnote 1, which we understand is currently being developed.	Addressed. See response to comment 1.
3	General		In order to ensure implementation of this Policy Statement, OPIC must allocate sufficient resources for the environmental and social appraisal and monitoring processes. This is especially critical with regards to social impacts of the projects it supports, as the San Bartolome case demonstrated. Additional staff may be needed to ensure that the Policy Statement is not an empty commitment to sustainable development.	Noted.
4	General		As a public agency with a development mandate, OPIC should not be financing harmful projects as it has in the past, including the Baku-T?blisi-Ceyhan pipeline in the Caucasus, the Sakhalin II oil and gas project in Russia, and the Kumtor gold mine in Kyrgyzstan.	Noted
5	General		OPIC Compliance: ESPS Section 6 discusses project sponsor compliance, noncompliance, remediation and termination, but not OPIC's compliance with its own policies. And while OPIC commits to follow the IFC Performance Standards (which principally apply to clients), the ESPS should further define OPIC's own compliance responsibilities and requirements.	The Policy Statement has been redrafted to clearly differentiate between Applicant's responsibilities and OPIC's responsibilities.

6	General		<p>Binding Regulation: The ESPS should incorporate the provisions of HR 3288 to require that the policy take the form of a regulation “with requirements binding on the Corporation and its investors that shall be consistently applied to all projects, funds and sub-projects supported by the Corporation.”</p>	<p>OPIC does not regulate an industry or have a high volume of similarly situated transactions that would warrant formulation of regulations. As a practical matter OPIC supports a wide range of clients who operate in a wide range of sectors that may face various national or localized environmental and social policy issues. OPIC’s volume of transactions in any one sector or client type is not large enough to merit specific regulations. The length and areas such a regulation would cover would not be an effective method of achieving the purposes articulated in the Environmental and Social Policy Statement. The Environmental and Social Policy Statement is the optimal way for OPIC to put clients seeking OPIC support on notice of the various policies that may be applicable to their particular project. Instead of clients being bound by general regulations OPIC has determined that specific review of each transaction allows OPIC to effectively bind clients in the appropriate transaction document much more effectively.</p>
7	General		<p>Although OPIC is currently drafting a human rights policy in response to H.R. 3288, which requires OPIC to develop standards that meet international workers rights and human rights, there is a need to integrate human rights issues into the Environmental and Social Policy. For example, in addition to requiring assessment of general environmental and social requirements in evaluating prospective OPIC projects, there should also be assessment of human rights impacts.</p>	<p>Addressed. See response to comment 1.</p>
8	General		<p>We understand that OPIC is drafting a human rights policy separately from the Environmental and Social Policy revision. As the agency develops its human rights approach, we encourage you to examine root causes of conflict and human rights abuses, including how the provision of political risk insurance may, in certain cases, exacerbate human rights risks. We hope that OPIC will ultimately adopt a robust and detailed set of procedures and standards governing human rights, and that it will make all necessary efforts to update and rationalize the Environmental and Social Policy (ESP) to synch with the new human rights framework.</p>	<p>Addressed. See response to comment 1.</p>

9	General		In parallel to the revision of OPIC's human rights policy, it is critical that human rights are also integrated into the proposed new ESPS, which outlines the process for assessing and preventing adverse impacts of prospective and ongoing projects. In particular Amnesty International is calling for a robust due diligence process to be built into the Environmental and Social Management System of the proposed draft statement to ensure that OPIC does not provide support to commercial activity that causes or contributes to human rights violations.	Addressed. See response to comment 1.
10	General		OPIC can continue this leadership by strengthening its financing for renewable energy projects (and projects that incorporate renewable energy technology) and committing to phasing out the financing of fossil fuel projects.	Noted
11	General		OPIC relies extensively on information from clients to determine the client's compliance with OPIC's policies. While it is important that companies gather and compile data on their impacts, allowing a client to have substantial control over the compilation of information raises concerns about the independence and reliability of the information. While OPIC does provide for some level of auditing of information, it should strengthen its processes to verify information, and ensure that information is both accurate and complete.	OPIC relies only in part on material representations made by Applicants. It should be noted that Applicants are required to certify, under penalty of law, that all statements and information provided in applications are true and correct. Despite resource constraints OPIC is committed to site monitoring as many projects as is feasible. OPIC is also hiring consultants to supplement staff efforts and to provide independent verification of Applicant representations.
12	General		The Draft ESPS does not address the accountability of OPIC. This gap weakens OPIC's own accountability and the ability of the Office of Accountability to review OPIC's compliance with its own policies. The ESPS should include measures to be taken by the Office of Accountability to address OPIC's compliance with its own policies.	Reference to the Office of Accountability has been added to Section 5.
13	General		Please - we need to protect what resources we have and watch out for our people and animals who are on this planet.	Noted

14	1	1.1	<p>1.1 Statement of Purpose and Scope</p> <p>Footnote 1 makes reference to separate OPIC policies on worker rights and human rights. These policies should be closely integrated with the ESP. For example, Environmental and Social Impact Assessments (ESIA) should include a component on human rights issues (i.e. a human rights impact assessment) to ensure that proposed projects are not undermining human rights. Like an ESIA, a human rights impact assessment should include an analysis of the project, its benefits, an analysis of potential human rights impacts, an analysis of alternatives, and ways to avoid negative human rights consequences.</p>	Addressed. See response to comment 1.
15	1	1.2	<p>1.2-1.3: Source of Policy</p> <p>OPIC uses the International Finance Corporation's (IFC's) Performance Standards as a benchmark, which is appropriate. IFC is currently reviewing these standards, however, and OPIC should avoid any such backsliding by ensuring that any weakening in IFC's standards do not allow for a weakening of OPIC's standards.</p>	Noted.
16	1	1.2	<p>IFC performance standards: We understand that OPIC intends to link its policy to the environmental and social performance standards at the International Financial Corporation (IFC). However, the IFC is currently updating these standards and we strongly recommend that OPIC wait to link its policy to those at the IFC until the IFC's review process is complete.</p>	OPIC is required under H.R. 3288 to issue the revised environmental and social policy within 180 days of the enactment of the legislation. IFC is not expected to issue the revised Performance Standards within that time frame.
17	1	1.2	<p>Evolving Policy Context: The ESPS uses, among others, the International Finance Corporation's (IFC) Performance Standards as a benchmark. IFC is currently in the process of revising the Performance Standards and OPIC cannot guarantee that IFC's 2 revised Performance Standards will be satisfactory. ESPS should include reference to the HR 3288 requirement that "regulations shall be no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009, and the environmental and social policies of the World Bank Group."</p>	Addressed. See response to comment 16.

18	1	1.2	In addition, according to Section 1.2, the “Policy Statement adopts, as a benchmark for the environmental and social review process, the International Finance Corporation’s (IFC) Performance Standards on Social and Environmental Sustainability and Industry Sector Guidelines.” However, the IFC guidelines are currently being revisited through the 2010 IFC review process; until we see the final outcome of the process, it is unsound to link the OPIC Policy with IFC standards.	Addressed. See response to comment 16.
19	1	1.2	The IFC standards are currently under review and may not ultimately reflect international best practices. For example, with respect to indigenous peoples, it is unclear whether the IFC will adopt the standard of Free, Prior and Informed Consent in line with the UN Declaration on Rights of Indigenous Peoples.	Noted
20	1	1.3	Because the PS have now been adopted by 67 private banks (known as the Equator Principle Financial Institutions) and ECAs from OECD countries, which together represent over 70% of project finance in developing countries, we agree that it is not unreasonable to expect that OPIC’s clients should be required to comply with them. However, we disagree with the implication in Paragraph 1.3 that the purpose of the PS is to identify “reasonable responsibilities and obligations of private sector investors in projects in emerging markets.” Rather, as described above, the PS and OPIC’s Policy Statement should identify the responsibilities of its clients that will ensure that the projects OPIC supports do not harm communities or the environment.	The text has been modified to emphasize that the IFC Performance Standards will be used as the standard for project performance.

21	2		<p>Screening</p> <p>The success of an environmental and social risk management system also depends on the initial boundaries that you set—determining which impacts to consider, and identifying which stakeholders to engage. By drawing an artificial line around a project’s boundaries, OPIC continues to be exposed to many environmental and social risks.</p> <p>On the environmental side, we recommend that you incorporate the concept of ecosystem services into your screening and impact assessment process. Ecosystem services allows for a more accurate assessment of how local communities depend on the surrounding environment, and how the project itself depends on the surrounding environment. For more information, please see:  <a href="http://www.wri.org/project/mainstreaming-ecosystem-services">http://www.wri.org/project/mainstreaming-ecosystem-services</a>, as well as <a href="http://pdf.wri.org/banking_on_natures_assets.pdf">http://pdf.wri.org/banking_on_natures_assets.pdf</a>.</p> <p>On the social side, section 2.0 of the draft potentially excludes affected communities downstream from the project. Furthermore, section 2.2 does not take into account the local political context. In many parts of the Amazon, for example, indigenous communities make decisions as part of a larger federation and not as individual communities. By failing to require that clients take into account the broader political context and human rights conditions during screening, there is a risk that clients will inadvertently consult communities in an inappropriate manner, “divide and conquer” communities, or exclude key stakeholders.</p> <p>Sources of information for OPIC’s decision</p>	<p>OPIC agrees. OPIC has adopted the definition of "Area of Influence" that is used by the Asian Development Bank and the IFC to more comprehensively address project scope for the purposes of screening and assessment. The reference to "ecological values" in Paragraph 2.5 has been changed to "ecosystem services" and illustrative examples of those services have been added to the text.</p>
22	2	2.0	<p>Defining the scope of a project is a critical decision. Many controversial projects supported by multilateral development banks and ECAs are controversial because the scope of the project was drawn too narrowly, ignoring impacts the project had on communities and environment. Identifying a project scope that includes impacts outside the site boundary will reduce the risk of controversy that could interfere with project implementation. IFC uses the term “area of influence” and defines it to include areas “potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition...areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location.”</p>	<p>Addressed. See response to comment 21.</p>

23	2	2.0	<p>The recent audit conducted by the IFC's Compliance Advisor Ombudsman of an investment in a palm oil company demonstrates the importance of considering the environmental and social impacts associated with the supply chain. The Policy Statement would include those impacts only if material inputs were sourced from ecologically sensitive areas, but that is not the only type of impact that could arise. For example, materials could be sourced from an operation that uses child or slave labor. OPIC should broaden its project scope to include supply chain impacts and specify how they will be assessed.</p>	<p>OPIC agrees. The following sentence has been added to the definition of "Area of Influence": "Any identifiable expansion of materials or resource development that is inherent to a project's success should be included within a project's Area of Influence." Supply chain issues related to labor and human rights will be addressed in the Labor and Human Rights Policy Statement.</p>
24	2	2.0	<p>Cumulative Impacts: Like many financial institutions, OPIC's Draft Policy draws a clear boundary around project facilities to determine which impacts must be addressed, and which communities must be consulted. This creates a risk of excluding affected communities, such as those living downstream from a project. OPIC should also take into account the cumulative impacts of its investments.</p>	<p>Addressed. OPIC has adopted the definition of "area of influence" that is used by the Asian Development Bank and the IFC to more comprehensively address project scope for the purposes of screening and assessment, including cumulative impacts.</p>
25	2	2.0	<p>This Draft draws a clear boundary around project facilities to determine which impacts must be addressed and which communities must be consulted. Through the detailed and specific categorization of projects, with proper implementation and monitoring, communities could benefit from inclusion in a categorized area. However, this method of categorization also creates a risk of excluding affected communities, for example, those living downstream from a project. The Policy should also take into account the cumulative impacts of OPIC investments.</p>	<p>Addressed. See response to comment 23.</p>
26	2	2.0	<p>2.0 Screening</p> <p>The scope of the project is too narrowly defined, particularly with respect to supply chain impacts. Certain types of projects necessarily require significant expansion in supply chains. (The recent "Wilmar" case at the IFC regarding investments in a palm oil trading facility is a good example). Such a project's scope should include inherent expansion of activities in the supply chain. This should not be limited as in the draft to "raw material inputs" from "ecologically sensitive areas". Any identifiable expansion of materials or resource development that is inherent to the project's success should be considered part of the project's scope.</p>	<p>Addressed. See response to comment 23.</p>

27	2	2.5	<p>In paragraph 2.5, when citing examples of ecological and social values and sensitive locations, the phrase “but are not limited to” should be added. For example, “Examples of ecological values include but are not limited to biodiversity and watershed or coastal protections.” This is consistent with the listing of examples in the paragraphs describing Category B, C, and D projects.</p>	The requested changes have been made in Paragraph 2.5.
28	2	2.6	<p>2.6 Impacts</p> <p>OPIC should be clear that both direct and indirect impacts of a project should be considered as should impacts inside and outside of the project’s boundaries as well as transboundary and global impacts.</p> <p>OPIC should also consider the cumulative impacts of this project and any associated or similar projects. Thus, for example, if the OPIC-financed project is the first of a series of linked hydro-electric dams planned for a particular river basin, then the OPIC ESIA should consider all cumulative impacts from all of the planned dams. Moreover, the contribution of an OPIC-financed project should be considered in light of cumulative impacts of similar kinds occurring in the region.</p>	Addressed. See response to comment 24.

29	2	2.10	<p>2.10 Category D Projects</p> <p>OPIC has created a separate category, Category D, for projects implemented by financial intermediaries. It appears that OPIC intends to screen, assess and monitor the subprojects funded by financial intermediaries in the same way that it evaluates its Category A, B, and C projects. (see para. 3.23 as well). Nonetheless, OPIC states that it will screen, assess and provide consent to sub-projects “at the time and in the manner described in the agreement with the financial intermediary”. (paras. 2.10 and 3.23). This provides potentially confusing standards in that the agreement with the financial intermediary may be different than the requirements found in the ESP. This does not provide assurances that OPIC will meet the requirements of HR 3288, which calls for a policy “that shall be consistently applied to all projects, funds and subprojects supported by the corporation.” We recommend that this paragraph be clarified to assert that notwithstanding anything in the financial intermediary agreement, OPIC will apply the ESP fully to all sub-projects.</p>	<p>OPIC has not proposed any change in policy. OPIC has used "Category D" as the screening categorization for financial intermediaries since the publication of the draft "Environmental Handbook" in 1998. Establishing a Category D for OPIC commitments to financial intermediaries puts their sponsors on notice that OPIC's support of the intermediary's activities is conditional, inasmuch as any "subproject" that OPIC supports through the financial intermediary will have to meet the same standards as projects that OPIC supports directly. There is no difference in the standard applied, only a timing difference because the standard can only be applied when a specific subproject is identified. At the time of subproject identification, OPIC screens and assesses each specific subproject in accordance with the ESPS and must provide a consent based on that analysis before any investment can be made using OPIC-guarantied funds.</p>
30	2	2.10	<p>The great disparity between Category A and Category B, especially with regard to disclosure of information, will create the incentive to downplay risks and narrow the scope of the project to avoid “burdensome” requirements. A similar risk of avoiding social and environmental requirements can occur through investments in financial intermediaries, or Category D projects. Category D subprojects that have the same impacts as Category A or B projects should not receive different treatment. As written, OPIC will determine how these subprojects are assessed and approved “at a time and in the manner” described in an agreement that is not publicly available.</p>	<p>Addressed - see response to comment 29</p>
31	2	2.10	<p>Application of standards to financial intermediaries: Section 2.10 of the Draft Policy creates a distinction and contradiction between Category D financial intermediary and sub-projects, and Categories A-C. Recent legislation on OPIC's environmental policy, HR 3288 calls for a policy “that shall be consistently applied to all projects, funds and subprojects supported by the corporation.”</p>	<p>Addressed. See response to comment 29.</p>

32	2	2.10	<p>Application of standards to financial intermediaries: HR 3288 calls for a policy “that shall be consistently applied to all projects, funds and subprojects supported by the corporation.” Meanwhile, ESPS Section 2.10 describes environmental categories of projects including Category D, Financial Intermediaries. Section 2.10 also indicates that Category D Financial Intermediary projects make investments in sub-projects that may fall into project Categories A, B or C. This creates a confusing distinction that may not be necessary to include in the draft Policy. Section 2.10 also states that OPIC will screen, review and provide prior written consent to each of these sub-projects on the basis of potential environmental and social risks at the time and in the manner described in the agreement with the financial intermediary. This infers that the timing of the application of OPIC’s Environmental and Social Policy differs for Category D projects. If this interpretation is correct, this will create contradiction between policy provisions for Category D financial intermediary and sub-projects, in violation of HR 3288. A policy articulation which affirms the HR 3288 consistency mandate should be included. Alternatively, the ESPS could simply delete</p>	Addressed. See response to comment 29.
33	2	2.10	<p>Section 2.10, which outlines the application of standards to financial intermediaries, produces a contradiction and distinction between Category D financial intermediary and subprojects, and Categories A through C. However, according to Section 7079 of H.R. 3288, OPIC is obliged to issue policies “ that shall be consistently applied to all projects, funds and subprojects supported by the Corporation”.</p>	Addressed. See response to comment 29.
34	3		<p>Role of OPIC vs. role of clients Most public financial institutions’ environmental and social policies include a clear delineation of the responsibilities of the financial institution vs. clients. The IFC, for example, has a Sustainability Policy that governs IFC’s role, and Performance Standards that govern clients’ role. Your draft mixes together the requirements of OPIC and its clients, which may send unclear signals to clients. We recommend a clearer distinction of OPIC’s and clients’ roles.</p>	OPIC agrees. The ESPS has been reformatted and rewritten to clearly differentiate roles and responsibilities.
35	3		<p>The core human rights requirements for companies applying for state support should be built into OPIC’s application process and in sections three and four of the ESPS.</p>	Noted. See response to comment 1.

36	3		<p>OPIC's draft ESPS outlines that documents on the potential adverse impacts of projects should be made public without compromising confidential business information. It is critical that any limitations on disclosure of information should be clearly defined and narrowly drawn. While some information may legitimately be considered confidential, confidentiality must not be used as an excuse to withhold information relevant to understand the impact of the project. In particular, section three of the ESPS should specifically require the public disclosure of the human rights, environmental and social action plan, monitoring and reporting performance –including as a result of any revisions - throughout the lifespan of a project.</p>	<p>This is a relatively new area of policy concern, and one in which public institutions can be expected to strengthen their requirements based on their growing practical experience. In other new areas OPIC has initially used the practices of the World Bank Group as a starting point and then gradually gone beyond them. We believe that this is a sound approach here too. In any event protection of business confidentiality is also a legitimate concern that limits disclosure of information by or at the behest of a U.S. government agency.</p>
37	3	3.1	<p>Public disclosure of environmental and social management: Section 3.1 of the Draft Policy identifies processes that are normally included in Environmental and Social Management Systems, including environmental and social action plan, monitoring and reporting performance. However, it is unclear whether or not these documents are publicly disclosed. The public disclosure of the environmental and social action plan, monitoring and reporting should be explicitly required in the Policy.</p>	<p>OPIC is requiring that all projects must meet the requirements of the IFC Performance Standards, including the access to information, consultation, reporting and grievance mechanism requirements found in Performance Standard 1. OPIC also is requiring that draft ESAPs be included in ESAs disclosed for public comment.</p>
38	3	3.1	<p>Public disclosure of environmental and social management: ESPS Section 3.1 outlines elements included in Environmental and Social Management Systems, including environmental and social action plans, monitoring and reporting performance results. The ESPS should include an explicit requirement that all these documents should be publicly disclosed.</p>	<p>Addressed. See response to comment 37.</p>
39	3	3.1	<p>Section 3.1 of the Draft identifies processes that are normally included in Environmental and Social Management Systems, including environmental and social action plan, monitoring and reporting performances. However, the public disclosure of these processes (environmental and social action plan, monitoring and reporting) should be explicitly required.</p>	<p>Addressed. See response to comment 37.</p>

40	3	3.1	3.1. We support OPIC's requirement that Applicant's to have an Environmental and Social Management Plan that meets requirements laid out by OPIC and the IFC Performance Standards. Further, we agree with OPIC that community engagement is important in having an effective Environmental and Social Management Plan. To that end, OPIC should require Applicants to disclose their Environmental and Social Management Plan and System to the communities, and require consultation with the community about this plan, rather than merely noting that community engagement "normally involves" these things. Further, OPIC should require that there be a grievance mechanism at least in Category A projects.	OPIC has revised the paragraph to reflect the requested changes. OPIC is now requiring all projects to establish a grievance mechanism appropriate to the nature and scale of the project.
41	3	3.1	Section 3.1 of the draft indentifies the public disclosure process. It should be explicitly required that public disclosure also includes the disclosure of the environmental and social monitoring and reporting.	Addressed. See response to comment 37.
42	3	3.2	The third pillar of Ruggie's report is that corporations should establish a project-level grievance mechanism for people who feel their rights have been violated. This requirement is included in Performance Standard 1 of the International Finance Corporation (IFC), and, therefore, is included in OPIC's policy to the extent that OPIC has adopted the IFC's Performance Standards (see below). Further guidance to OPIC's clients on the establishment of a project-level grievance mechanism can be found in an advisory note by the IFC's Compliance Advisor Ombudsman. <sup>2</sup> Incorporating these requirements in OPIC's Policy Statement would not conflict with OPIC's obligations under the Foreign Assistance Act because OPIC would be evaluating the human rights impacts of its clients rather than the human rights record of the host country, which is the responsibility of the State Department.	Addressed. See response to comment 40.
43	3	3.2	A grievance mechanism should be put in place to allow affected communities to raise complaints to the company as a result of alleged or potential negative impacts on their human rights; this mechanism could be established by the project overall.	Addressed. See response to comment 40.

44	3	3.4	<p>Assessment of human rights impacts: ESPS Section 3.4 includes requirements for environmental and social impact assessment. These assessments only partially identify the human rights impacts potentially associated with projects. For example, some projects with human rights impacts might not be classified by OPIC in a category requiring an environmental and social impact assessment. OPIC should therefore also require a human rights impact assessment as a means to more fully evaluate potential sources of conflict within and between project-affected communities, governments and project sponsors which can result from or be accelerated by projects. Legal dimensions of human rights impacts, such as the presence or absence of recourse for harm caused can also be addressed in human rights assessments. We will elaborate on these issues further when OPIC commences its human rights policy development as required by HR 3288.</p>	Noted. See response to comment 1.
45	3	3.4	<p>Environmental and social impact assessment is essential to outlining the potential risks and impacts associated with a project. The topics examined during an assessment review outlined in section 3.4, however, do not capture many of the root causes of conflict that projects can bring. OPIC should also assess the potential for discrimination in the project, existing potential sources of community conflict, and whether affected communities have access to recourse for any harm caused.</p>	Paragraph 3.10 has been revised to include the requested information.
46	3	3.4	<p>Cumulative impacts A common problem with environmental/social impact assessments is the failure to assess the cumulative impacts of project. If OPIC finances only one facility in a larger project, for example, ESAs should consider the impacts of the overall project and not just the individual piece. The facility could exacerbate the impacts of other parts of the project—such as impacts of migrant workers, road traffic, or water usage levels. OPIC should ensure that clients assess cumulative impacts.</p>	Paragraph 3.2 has been revised to indicate that OPIC will consider cumulative impacts within our reviews. The definition of "Area of Influence" also captures the concept of cumulative impact assessment.

47	3	3.4	<p>3.4. With respect to environmental issues, OPIC should explicitly identify impacts on biological diversity, including rare and endangered plants and animals and their habitat, among the potential impacts.</p> <p>With respect to social issues, OPIC's assessment should include the potential for disparate impacts according to gender, potential sources of community conflict, impacts on the very poor, and human rights-related impacts.</p>	Paragraph 3.10 has been revised to include the requested information.
48	3	3.4	The cumulative impact considerations of proposed projects should not be excluded when considering the environmental and social impacts. The health effects of long-term emissions into the air and water must always be considered as well as the impact on scarce resources.	Addressed. See response to comment 46. IFC Performance Standard 4 also addresses community health impacts.
49	3	3.4	<p>Evolving Policy Context: The ESPS uses, among others, the International Finance Corporation's (IFC) Performance Standards as a benchmark. IFC is currently in the process of revising the Performance Standards and OPIC cannot guarantee that IFC's 2 revised Performance Standards will be satisfactory. ESPS should include reference to the HR 3288 requirement that "regulations shall be no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009, and the environmental and social policies of the World Bank Group."</p>	OPIC has reviewed the draft revision of the Performance Standards and modified the ESPS to align with the new/revised requirements.
50	3	3.5	The difference between an Environmental and Social Impact Assessment (ESIA) for Greenfield Category A projects and a Baseline Audit for existing Category A projects, described in Paragraph 3.5, is not clear. Although Paragraph 3.5 states that a Baseline Audit is required for pre-existing projects, Appendix E, in its definition of a Baseline Audit, states that it is used for pre-existing facilities or new construction on a site where prior industrial activities have occurred. If the Baseline Audit is any less rigorous than an ESIA, then, at a minimum, it should not be applied to new construction. Just because industrial activity occurred on a site previously does not mean that the new construction could not produce impacts that are different in nature than the previous activity or that continued industrial activity is sustainable for that ecosystem.	OPIC has redrafted what is now paragraph 3.11 to clarify the difference between the two documents.

51	3	3.6	Indeed, Paragraph 3.6 states that, for Category B projects, the Applicants should include a map or drawing of the "area of influence". OPIC should either adopt the IFC's term or broaden its definition of project scope to include impacts caused by the project but outside of the site boundary.	Addressed. See response to comment 23.
52	3	3.8	Paragraph 3.8 should specify that the Environmental and Social Action Plan (ESAP) describe the schedule, in addition to the mechanism, for external reporting to affected communities on implementation of the Plan.	The description of the ESAP (now found in paragraph 3.14) has been revised to include the requested information.
53	3	3.8	3.8 Disclosure of the ESAP  The ESAP is the fundamental document that ensures the proposed project will meet the applicable environmental and social standards. OPIC cannot provide its final approval until the ESAP is prepared and reviewed by OPIC. Moreover, public disclosure of the ESAP must happen during the planning phase of the project, not during the project implementation phase so that any concerns with the ESAP can be vetted while there is time still to alter the project's design, operations or mitigation steps. Thus, the ESAP must be disclosed and consultation allowed prior to OPIC's final decision of support.	Paragraph 3.14 now include a specific requirement for draft ESAP disclosure at the same time as disclosure of the ESIA for Category A projects. In addition OPIC has committed to posting the final ESAPs on the OPIC web site for Category A projects.
54	3	3.9	As described above, in order to reduce the incentive to miscategorize projects to avoid the application of requirements, ESAPs for Category B projects should also be disclosed on the OPIC website.	As stated in Performance Standard 1, not all Category B projects would require the preparation of an ESAP. In order to insure consistent disclosure for Category B projects, OPIC identifies any specific mitigation measures or monitoring requirements necessary for projects to meet the Performance Standards in the project summaries posted on the OPIC web site.
55	3	3.9	Continued application of standards to project expansions: ESPS Section 3.9 appropriately requires Environmental and Social Action Plans to be disclosed prior to project implementation. We assume that the term "project implementation" includes the 3 construction phase of projects. If so, the ESPS should also stipulate the required disclosure after construction as well, in the event that these documents are revised at a later date, and since OPIC financing may be sought for non-greenfield projects which are already past the construction phase.	Addressed. See response to comment 53.

56	3	3.9	According to section 3.9, environmental and social action plans are required prior to project implementation. This requirement should be extended to the period afterwards as well, to account for changes such as action plans that are revised and non-Greenfield projects that are already implemented.	Addressed. See response to comment 53.
57	3	3.10	As we have seen with the IFC over the last four years, it is not sufficient for the financing entity to ensure that the environmental and social management system complies with certain standards. A client may have a system that looks good on paper, but does not achieve the objective of protecting communities and the environment on the ground. OPIC's responsibility should not constitute a "box-ticking" exercise. Rather, it is OPIC's responsibility to ensure that the client's system actually achieves results. To discharge its responsibility, OPIC should not rely exclusively on client-provided information to determine whether requirements are being met, but independently verify that adverse environmental and social impacts are avoided or mitigated.	OPIC does not rely entirely on client-provided information during the assessment process. OPIC conducts site visits, hires independent consultants and utilizes OPIC research staff for additional verification. OPIC is in the process of hiring additional consultants to support this effort.
58	3	3.14	We support OPIC's reliance on the World Commission on Dams.	Noted
59	3	3.15	As written, the Policy Statement requires that forest products be certified according to a common set of principles and procedural protocols, but gives no indication what the purpose of the certification is.	Paragraph 3.21 had been amended to include the requested information.
60	3	3.15	Forestry Projects: We support the ESPS prohibitions against commercial forestry projects that involve the extraction of timber from critical forest areas or related critical natural habitats. We believe that this should be clarified to include, inter alia, all primary forests. We also support the ESPS requirements related to forestry certification, however in keeping with the recommended prohibition on commercial logging in all primary forests, this provision should be limited to second growth forests.	The definition of "critical forest area" has been modified to include a reference to primary forests and old growth forests that may serve as critical carbon sinks.
61	3	3.15	Also, the ESPS forest projects section should be amended to create a consistent prohibition on the clearing of critical forest areas, critical habitat and primary forests by non-forestry activities, such as projects in the extractive sector situated in or affecting these forest types.	Paragraph 3.20 has been modified to include the requested information.

62	3	3.15	<p>3.15 Forestry Projects</p> <p>We support OPIC's ban on commercial forestry projects involving extraction of timber from critical forest areas and critical natural habitats. We believe this should be extended however to explicitly cover all primary forests. In addition, the OPIC policy should prohibit clearing of critical forest areas, critical habitat or primary forests by non-forestry such as projects in the extractive sector or dams situated in or affecting these forest types.</p>	Addressed. See response to comment 60.
63	3	3.16	<p>There are many different forest certification programs available. Forest products could be certified only for their legality or for their legality and sustainability. OPIC should have minimum criteria for the explicit forestry certification programs it allows.</p>	OPIC believes that the information in paragraph 3.21 is sufficient to define acceptable certification programs, but we have noted that acceptable certification systems must also include social principles.
64	3	3.18	<p>OPIC should also require that its clients, regardless of the location of their operations, comply with the requirements of the Lacey Act, as amended, which prohibits the purchase or sale of timber products that have been harvested illegally in their country of origin.</p>	OPIC has added the following categorical prohibition, which we believe addresses the concern: "Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements"
65	3	3.23	<p>It is unclear how that is consistent with Paragraph 3.22, which states that OPIC will apply all the same procedures as direct applicants. OPIC should clarify how the public will know when a subproject is being considered for OPIC approval and what standards will be applied to subprojects.</p>	Because of business confidential issues associated with prospective Fund investments, OPIC only is disclosing information on prospective Category A Fund investments at this time. On a quarterly basis, OPIC is disclosing information on other Investment Fund subprojects.
66	3	3.23	<p>As described above, the manner and timing for OPIC consent to FI subprojects should be consistent across FIs and made public through OPIC's website. Paragraph 3.27 does not provide sufficient clarity on the responsibilities of the FIs to OPIC or to the project-affected communities.</p>	Addressed. See response to comment 29.
67	3	3.23	<p>We urge OPIC to consider the policies at the Asian Development Bank and the EBRD regarding Financial Intermediaries.</p>	Noted
68	3	3.23	<p>The agency should clarify that all FI transactions and sub-projects must comply with the agency's environmental and social standards and procedures. For example, the ESP's sections on Conditions and Compliance and Audits include provisions which apply to Category A projects, but not to FIs such as investment funds.</p>	Addressed. See response to comment 29.

69	3	3.23	<p>OPIC should not invest in funds based in secrecy jurisdictions. The Tax Justice Network's Financial Secrecy Index may provide some helpful guidance in this regard: <a href="http://www.financialsecrecyindex.com/">http://www.financialsecrecyindex.com/</a></p>	<p>Investment Funds are formed by the equity investors, and OPIC does not make equity investments. Industry practice has concentrated funds in certain jurisdictions, for legitimate business reasons, and OPIC cannot assume that the funds or the investors in them are violating local or U.S. law; nor can OPIC impose disclosure requirements that exceed legal norms or disregard business confidentiality. However, OPIC finance documents require compliance with applicable law, including tax law, and there are therefore contractual consequences as well as regulatory ones for violations.</p>
70	3	3.23	<p>For those investment funds in which OPIC does invest, OPIC should require that they present their accounts on a country-by-country basis to help ensure that taxes are being duly paid.</p>	<p>Addressed. See response to comment 69.</p>
71	3	3.24	<p>OPIC should elucidate specific processes by which it will audit and ensure compliance from FIs.</p>	<p>Addressed. See response to comment 69. OPIC addresses compliance in each consent issued on subprojects.</p>
72	3	3.27	<p>In addition, the Policy Statement does not identify any requirements for the FI itself. The EBRD's Performance Requirement on Financial Intermediaries requires its FI clients in their human resources policies and practices to comply with its Performance Requirement on Labor and Working Conditions.</p>	<p>Noted. See response to comment 1.</p>
73	4		<p>Consistent application of international standards: Section 4 of the Draft Policy allows OPIC to select what standards it will apply on an ad hoc basis. As a result, the standards could vary for each separate project. This is very confusing, especially for communities affected by OPIC projects who will not be able to determine if projects are in compliance with OPIC requirements. Furthermore, it may favor one affected community over another. For example, if particular environmental standards apply to one project but not to a similar project, communities affected by the former have more protections than communities affected by the latter.</p>	<p>The text has been revised to indicate that all projects are required to meet the IFC performance standards. The text also has been revised to indicate that OPIC applies supplemental standards (over and above what the Performance Standards require) when additional preventative or protective measures are required to address project-specific risks and impacts.</p>

74	4		Section 4 allows OPIC to select what standards it will apply on an ad hoc basis. As a result, the standards could vary for each separate project, leaving the communities affected by OPIC projects uncertain of whether the projects are in compliance with OPIC requirements. There needs to be a consistent application of international standards, so that affected communities can be equally supported and feel protected by OPIC.	Addressed. See response to comment 73.
75	4		Section four of OPIC's ESPS references a range of standards but makes no reference to international human rights standards. The standards currently referenced do not address human rights consistently, or adequately. The IFC Performance Standards, for example, contain provisions aimed at avoiding some negative social impacts of projects, such as involuntary resettlement and negative impacts on community health. However, these provisions cannot be considered adequate to comprehensively address the human rights that may be affected by projects. The ESPS should recommend that OPIC-backed projects are assessed against international human rights standards, with a clear view to preventing projects from causing or contributing to human rights abuses.	Noted. See response to comment 1.
76	4		A core element of client due diligence should include carrying out a full impact assessment –in particular for projects which are categorised as having the potential to have significant adverse impacts. An impact assessment process is currently laid out in Section four of the ESPS but is limited to requiring an impact assessment of environmental and social impacts.	Noted. See response to comment 1.
77	4		The core human rights requirements for companies applying for state support should be built into OPIC's application process and in sections three and four of the ESPS.	Noted. See response to comment 1.

78	4	4.0	<p>Ineffective reference to external standards</p> <p>While we appreciate the need for professional discretion at OPIC, this section potentially undermines the entire policy statement. Under the draft policy statement, OPIC's use of standards would be neither predictable nor transparent. Communities need to know what standards OPIC has applied to a particular project, in order to hold the project proponents accountable for their environmental and social performance. Furthermore, the vagueness of this section could make it difficult for OPIC's Accountability Office to assess compliance.</p>	Addressed. See response to comment 73. Also, all standards that OPIC applies to projects are identified in project summaries.
79	4	4.0	<p>Section 4: Environmental and Social Standards</p> <p>We support OPIC's search for appropriate international standards to use as project-specific standards and guidelines. OPIC should require that all project-specific standards and guidelines applied to a specific project are identified and disclosed publicly early in the environmental assessment process. Any material deviation allowed from these standards should be explicitly identified and disclosed as part of the ESIA. All mitigation steps to bring the project into compliance should be included as part of the ESAP and subject to disclosure and consultation with the community. Para.4.3. should be amended to clarify that disclosure of any material deviations from applicable standards and the action steps should all be disclosed as part of the ESIA and ESAP.</p>	The text of Section 4 has been revised to require application of the Performance Standards to all projects. As a result of OPIC's due diligence supplemental standards may be identified beyond those previously identified in an Applicant's ESIA. OPIC commits to disclosing information on supplemental standards in OPIC's projects summaries that are posted on the OPIC web site. The discussion of material deviations has been revised to restrict deviations to alternative pollution prevention and control technologies. Additional text has been added regarding the requirement for an equivalency demonstration.
80	4	4.1	It is unclear whether the Policy Statement intends to adopt the IFC's Policy Standards on Social and Environmental Sustainability (PS) in their entirety or merely OPIC's interpretation of them. OPIC should adopt the IFC's PS in their entirety, and remove Appendix C.	Appendix C has been deleted.
81	4	4.1	OPIC should also consider policies adopted by regional development banks after the IFC approved the PS, in order to identify best practice. For example, the European Bank for Reconstruction and Development (EBRD) adopted its Environmental and Social Policy in 2008, which includes a specific Performance Requirement for Financial Intermediaries that should inform OPIC's requirements for FI projects.	Noted.
82	4	4.1	As described above, it is unclear whether the IFC's Performance Standards will apply to OPIC projects, and if not, what other standards will apply.	Addressed. See response to comment 73.

83	4	4.1	<p>Application of international standards: ESPS Section 4.1 and 4.2 states that OPIC will apply IFC's Performance Standards and Industry Sector Guidelines in most instances, and where gaps occur, OPIC may apply the standards of other international institutions. OPIC should also include US government standards, which is a consistent extension of OPIC's current practice of the identification of these standards in Host-Country Notifications. Also, OPIC should specify that the term "gaps" includes instances in which another international institution's or US government's standards are more stringent than IFC's Performance Standards and Industry Sector Guidelines.</p>	<p>Addressed. See response to comment 73. In the description of supplemental standards that may be applied to address project-specific risks, OPIC has included the option of reliance on US Federal Standards. For example, the discussion on renewable fuels projects in Section 3 of the revised ESPS is derived in large part from the US Renewable Fuels Standard.</p>
84	4	4.1	<p>Link to the IFC Performance Standards OPIC's draft claims to use the IFC Performance Standards as a "benchmark." Does this mean that the Performance Standards are binding on clients, or merely guidance? It is unclear when or how OPIC applies the Performance Standards.</p>	<p>Addressed. See response to comment 73. The term "benchmark" has been removed from the draft.</p>
85	4	4.1	<p>Evolving Policy Context: The ESPS uses, among others, the International Finance Corporation's (IFC) Performance Standards as a benchmark. IFC is currently in the process of revising the Performance Standards and OPIC cannot guarantee that IFC's 2 revised Performance Standards will be satisfactory. ESPS should include reference to the HR 3288 requirement that "regulations shall be no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009, and the environmental and social policies of the World Bank Group."</p>	<p>Addressed. See response to comment 16.</p>
86	4	4.2	<p>Paragraph 4.2 states that the Performance Standards "are considered" along with other approaches in developing project specific requirements. As currently written, this does not provide project-affected communities or civil society with enough information or certainty about what standards they should expect will be applied to any given project. It also does not ensure that a consistent set of standards will be applied across OPIC projects. This is a significant deficiency in the Policy Statement and is inconsistent with recently passed legislation regarding OPIC's requirements.</p>	<p>Addressed. See response to comment 73.</p>

87	4	4.2	<p>Appendix C is particularly problematic—by providing a summary of the Performance Standards, there is a risk that clients will comply with a watered-down version rather than the comprehensive set of standards. As with many environmental and social protections, the value of the Performance Standards lies in the details that they provide. As the example of community engagement describes below, broad principles are often ineffective. We encourage you to remove Appendix C from the draft.</p> <p>Furthermore, although the IFC Performance Standards have been widely adopted, they are not considered “best practice” in many respects. Many companies, including ones based in the United States, have gone far beyond the IFC in terms of environmental and social performance. How does OPIC justify committing to the new version of the Performance Standards before they are finalized in Fall 2010? There may be several discrepancies between the Performance Standards and U.S. policies. For example, because approval of the Performance Standards requires a consensus of IFC’s Board of Directors—composed of member governments—IFC standards on climate change may fall below U.S. standards.</p>	Addressed. Appendix C has been deleted. See also response to comment 16.
88	4	4.5	<p>While Friends of the Earth appreciates OPIC’s desire to apply additional standards and best practice as appropriate to particular transactions, adopting a policy that allows the agency to pick and choose standards seems rather ad hoc. OPIC should instead make a presumption in favor of implementing industry best practices. For example, mining projects should avoid the use of cyanide, and riverine and submarine tailings disposal methods. Although these industry best practices are not required in the current IFC mining sector guidelines, and may not be integrated into the new IFC standards, OPIC should nevertheless require them for its own mining transactions.</p>	Addressed. See response to comment 73. As noted OPIC can and will apply project-specific supplemental standards when necessary to address project specific risks and impacts. The text has been revised to note that these supplemental standards may include industry and non-governmental organization best practice guidance.
89	4	4.5	<p>Similarly, we encourage the agency to require full contract transparency and “publish what you pay” disclosure for all extractive industries, a standard that is only partially adopted in the current IFC guidelines.</p>	Paragraph 5.22 has been added to the revised ESPS to address the comment.

90	4	4.7	Particularly, section 4.7 states “where host country requirements differ significantly from the international standards identified under Section 5.1 and 5.2 of this Policy, OPIC will assess the project against the more rigorous and protective standard.” It is unclear who makes the decision regarding which standard is more rigorous. It is also unclear whose perspective is taken in determining which standard is more protective. Clarification and refinement are required to ensure that there is a fair assessment of standards.	The text has been revised to indicate that the more rigorous standard must be applied, which is consistent with language found in EBRD's Environmental and Social Policy.
91	4	4.8	The IFC is currently conducting a three-year review of the Policy and Performance Standards on Social and Environmental Sustainability, which will result in substantive changes. OPIC should not peg its policy to one that will be obsolete within a year. At a minimum, OPIC should explicitly state that it is adopting the PS, including any subsequent revision by the IFC.	The suggested language has been incorporated in paragraph 1.5. See response to comment 16.
92	5		Further, clients should be required to disclose to project-affected communities that they have received support from OPIC and information regarding OPIC's Office of Accountability (OA), including how project-affected communities can contact the OA should they be harmed by the project.	OPIC's agreements with investors contain general requirements to provide information and to cooperate with OPIC to satisfy policy requirements. Such comprehensive requirements are a better approach than obligations to cooperate for specific reasons or with particular offices within OPIC. OPIC has included contact information for the Office of Accountability within the revised ESPS.
93	5		I also urge you to expand measures to include more local community participation in project decision-making including a requirement for projects to respect project-affected communities' right to free prior informed consent.	Text has been added to Section 5 (paragraphs 5.7 and 5.18) to incorporate the IFC requirement related to broad community support, which reflects current USG policy.
94	5		The ESPS should require that projects not be approved unless project sponsors can demonstrate that the right to free, prior and informed consent has been provided in a culturally appropriate manner.	Addressed. See response to comment 93.
95	5		Public consultation should be required for all projects, not just category “A” projects. In many instances public consultation brings to light aspects of a proposed project that were not considered when originally classified as something less than category “A”.	The ESPS has been revised to reflect the consultation requirements found in Performance Standard 1.

96	5		<p>As you may know, Environmental Policy Act regulations for the preparation of an environmental impact statement require "scoping." Scoping is a process which requires project sponsors to consult with the public prior to the writing of an environmental statement. OPIC's policy statement should include a robust scoping requirement. OPIC should require scoping is properly undertaken prior to moving forward with funding considerations. The scoping report would have the advantage of providing OPIC with information that a sponsor may not be willing to share or did not know about. A scoping process would also facilitate OPIC site visits by helping the staff to quickly identify the issues of concern to the community. The scoping document should be public on OPIC's web site with an opportunity for public comment.</p>	<p>OPIC agrees that formal scoping and issues identification ultimately leads to better, more concise analyses in project ESIA's. Unfortunately the timing of OPIC support varies from transaction to transaction - and often occurs well after the project is conceived, the ESIA is drafted and approved by local authorities and the development is started. At that stage in the transaction it is not practical to require the investors to "start over" with a new scoping process.</p>
97	5	5.0	<p>Participation on decision-making: Given that OPIC has a development mandate, public participation upstream in the decision-making process is an imperative. The policy requires community consultations, but the standards are not robust enough to ensure that communities actually have a voice in project decision-making. As a result, project sponsors might claim compliance with consultation requirements through one-way informational briefings after a project has already begun. In particular, the policy does not ensure that consultations occur before key decisions are made, and does not require the client to demonstrate to communities how it responded to their concerns.</p> <p>According to the Environmental and Social Policies at the Asian Development Bank, meaningful consultations and participation in decision-making include a process that: "(i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides disclosures of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the</p>	<p>OPIC agrees. Throughout the ESPS OPIC has incorporated the defined term "meaningful consultation"</p>
98	5	5.0	<p>Free, prior and informed consent: The policy should ensure that projects do not go forward unless affected communities have demonstrated their free, prior and informed consent in a culturally appropriate manner.</p>	<p>Addressed. See reponse to comment 93.</p>
99	5	5.0	<p>Additionally, the Policy should ensure that projects do not go forward unless affected communities have demonstrated their free, prior and informed consent in a culturally appropriate manner.</p>	<p>Addressed. See response to comment 93.</p>

100	5	5.0	Providing affected people with the opportunity to influence project design.	Noted
101	5	5.0	<p>Community engagement</p> <p>OPIC's proposed community engagement requirements do not provide effective risk management tools. Effective community engagement should ensure that communities have access to information prior to consultations, and should participate in decision-making on key elements of project design, e.g. location of facilities, environmental and social risk management steps, and determination of community benefits.</p> <p>As currently designed, clients could comply with OPIC's community engagement requirements by arriving in a community the day before construction begins, briefing the community on what has already been decided, informing them of a pre-determined compensation amount, and taking a few questions. This is a recipe for conflict.</p> <p>Furthermore, the links to additional resources in the text do not substitute for strong policy language. We recommend that you consider the recommendations put forth in WRI's 2009 report, <i>Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects</i>: <a href="http://pdf.wri.org/breaking_ground_engaging_communities.pdf">http://pdf.wri.org/breaking_ground_engaging_communities.pdf</a>.</p> <p>Free, prior and informed consent</p> <p>OPIC should not invest directly or indirectly in any projects where indigenous communities have not provided their free, prior and informed consent (FPIC). IFC has a version of FPIC in its Sustainability Policy, called "broad community support," but the current version has many concerns. IFC is expected to strengthen this</p>	OPIC has revised the ESPS to more clearly indicate that all projects must meet the requirements of the Performance Standards. Performance Standard 1 does provide minimum standards for community engagement. See also reponse to comment 93.
102	5	5.0	OPIC's revised ESPS should specify that all companies receiving OPIC support should present a clear explanation of how affected communities will have access to information and be consulted on decisions and activities that are likely to affect their human rights throughout the project's lifespan.	The ESPS has been revised to more clearly indicate that all projects are required to meet the information disclosure requirements found in Performance Standard 1. For projects that have the potential for adverse impacts on Project Affected People, OPIC is also requiring the preparation of a Stakeholder Engagement Plan, which will provide a clear explanation of information access.
103	5	5.0	In cases where indigenous communities are likely to be affected in the context of supported transactions, given the special relationship Indigenous peoples have with their ancestral lands, international human rights standards would require that their informed consent be obtained prior to any developments on their lands.	Addressed. See response to comment 93.

104	5	5.0	<p>In addition to this, an independent monitoring of the consultation process should also be put in place. Such requirements should not be limited to Category A projects (as currently provided in the draft ESPS) but to all projects which are likely to have adverse impacts on human rights of affected communities.</p>	<p>All projects with the potential for significant adverse impacts on the human rights of Affected Communities would be screened as Category A under the policy. Please see point 32 in Appendix A.</p>
105	5	5.0	<p>Section 5: Public Consultation and Disclosure</p> <p>We agree with OPIC that community engagement during project development helps avoid delays in implementation, and that this engagement should be “inclusive, culturally appropriate and meet the needs of disadvantaged and vulnerable groups.” However, OPIC should be clearer that for Category A projects, consultations must be held with the community on the draft ESAP and any material deviations that will be allowed from the project-specific standards, all of which should be part of the draft ESIA. Similarly the ESAP and any material deviations should be included in the material that is translated pursuant to para. 5.3.</p> <p>5.11. We understand that the final ESAP or Remediation Plan may not be available for public disclosure and consultation but a draft ESAP and Remediation Plan should be.</p>	<p>OPIC agrees. Language has been included to require the disclosure of a draft ESAP at the time of initial disclosure of the ESIA.</p>
106	5	5.0	<p>OPIC should also require that companies that it supports make available and accessible all relevant information to the communities that are likely to be affected. Within a context where multiple companies or financial institutions may be involved in a project, OPIC should –directly or via its clients - seek all necessary assurances on transparency and access to information from the host state authorities and/or commercial operators of any business project they support, as appropriate, where the client is not in a position to guarantee such disclosure itself.</p>	<p>OPIC has modified the text to reflect the requirement that all projects have to meet the information disclosure requirements in Performance Standard 1. With respect to host country government disclosure of information, OPIC has included a new paragraph (5.22) which contains requirements related to the Extractive Industry Transparency Initiative.</p>

107	5	5.1	<p>OPIC also should enhance its requirements regarding the nature of the consultations to ensure that they are meaningful. We support OPIC's requirement that "environmental and social information should be made available to the project affected people in a language, format, and medium that is accessible" and facilitates the "free expression of opinions." However, while OPIC requires these steps and notes the importance of consultation, it does not provide any minimum rules or requirements about the nature of this consultation. Paragraph 5.5, offers references to further guidance on how to conduct meaningful public consultation, but does not require Project Applicants to follow any of these standards. As written, OPIC only requires some form of consultation, which seemingly could be one-way informational briefings. OPIC should require that consultations find suitable methods for facilitating oral or written comments from affected communities. OPIC should also require its clients to demonstrate that the communities' comments were heard and taken into consideration. Comments do not have to be accepted, but they should be considered.</p>	Addressed. See response to comment 101.
108	5	5.1	<p>The need for community engagement in all projects: The draft Policy requires formal consultation only on Category A projects. However, community impacts can occur and community and individual interests can be affected by Category B, C and D projects. OPIC should require an appropriate level of formal project consultations with affected communities regardless of the project classification.</p>	Addressed. See response to comment 101.
109	5	5.1	<p>Strong community engagement in all projects: The Draft Policy only requires consultation on Category A projects. This is inconsistent with a number of international standards regarding development project finance, including current standards at the IFC. Category B, C and D projects may still cause harm in the project areas and to communities living there. These communities should be consulted about decisions that affect their lives. A problem may also arise if OPIC mis-categorizes a project, and later corrects the categorization, but too late into the project cycle to return to consultations.</p>	Addressed. See response to comment 101.

110	5	5.1	The Draft Policy requires consultation on Category A projects, but excludes those communities harmed by Category B, C and D projects. Not only should there be a strong community engagement in all projects equally, but also, requiring consultation on only Category A projects can create problems if OPIC miscategorizes a project and later corrects the categorization. By that time, it will be too far into the project cycle to return to consultations.	Addressed. See response to comment 101.
111	5	5.1	OPIC also should enhance its requirements regarding the nature of the consultations to ensure that they are meaningful. We support OPIC's requirement that "environmental and social information should be made available to the project affected people in a language, format, and medium that is accessible" and facilitates the "free expression of opinions." However, while OPIC requires these steps and notes the importance of consultation, it does not provide any minimum rules or requirements about the nature of this consultation. Paragraph 5.5, offers references to further guidance on how to conduct meaningful public consultation, but does not require Project Applicants to follow any of these standards. As written, OPIC only requires some form of consultation, which seemingly could be one-way informational briefings. OPIC should require that consultations find suitable methods for facilitating oral or written comments from affected communities. OPIC should also require its clients to demonstrate that the communities' comments were heard and taken into consideration. Comments do not have to be accepted, but they should be considered.	Addressed. See response to comments 97 and 101.
112	5	5.2	OPIC's requirements for community consultation are not consistent with best practice, especially as it is unclear whether the IFC's Performance Standards apply. OPIC's Policy Statement does not even require the client to demonstrate how it has changed its plans to address concerns raised through the consultation process. Documenting only that the consultation process occurred is not sufficient.	OPIC has revised the ESPS to more clearly indicate that all projects must meet the requirements of the Performance Standards, including the requirements for consultation identified in Performance Standard 1. See also the response to comment 101.
113	5	5.3	Paragraph 5.3 requires that for Category A projects only a local language translation of the executive summary of the ESIA be disclosed to the project-affected community. This is insufficient. Project-affected communities and host government officials should have access to local language translations of the full environmental and social assessment for all Category A and B projects.	The OPIC requirement for translation of the executive summary for all ESIA's is in addition to the requirements of Performance Standard 1 related to access to information.

114	5	5.6	Presumption of disclosure: There should be a "presumption of disclosure," rather than an assumption that all information falls under "confidential business information." This is consistent with the U.S. Freedom of Information Act (FOIA).	The text has been revised to clarify that OPIC may withhold records or portions of records that are exempted from public disclosure under FOIA.
115	5	5.6	Section 5.6 assumes that all information falls under "confidential business information". Rather than that assumption, best practices requires that there be a "presumption of disclosure".	Addressed. See response to 114.
116	5	5.6	In general, OPIC should commit to openness and transparency as a "default position," rather than as an exception. OPIC and its clients currently assume that all client and project information is confidential unless otherwise stated. Specifically, OPIC should require disclosure of environmental and social action plans, monitoring reports, audits, and environmental and social loan covenants. Project affected communities can benefit greatly from knowing what environmental and social obligations clients and projects are supposed to fulfill, and what safeguards should be afforded through proper implementation of OPIC covenants.	Consistent with the provisions contained within the Performance Standards, the policy statement emphasizes that that the disclosure of project-related information is primarily the responsibility of the investor. Performance Standard 1 requires investors to disclose several documents and to periodically inform affected stakeholders on issues related to environmental and social performance. OPIC is including information in project summaries regarding environmental and social performance obligations and is posting on the OPIC web site final ESAPs for Category As. OPIC also will begin posted environmental and social site-monitoring summaries for those projects monitored by OPIC environmental staff.
117	5	5.6	OPIC's draft ESPS outlines that documents on the potential adverse impacts of projects should be made public without compromising confidential business information. It is critical that any limitations on disclosure of information should be clearly defined and narrowly drawn. While some information may legitimately be considered confidential, confidentiality must not be used as an excuse to withhold information relevant to understand the impact of the project. In particular, section three of the ESPS should specifically require the public disclosure of the human rights, environmental and social action plan, monitoring and reporting performance –including as a result of any revisions - throughout the lifespan of a project.	Consistent with the provisions contained within the Performance Standards, the policy statement emphasizes that that the disclosure of project-related information is primarily the responsibility of the investor. Performance Standard 1 requires investors to disclose several documents and to periodically inform affected stakeholders on issues related to environmental and social performance. Text has been added to the policy statement to indicate that affected communities should be informed when there are material changes to project design, environmental or social management procedures of mitigation.
118	5	5.6	It should be presumed that all relevant information concerning a proposed project will be made available to the public and the withholding of "confidential business information" the exception.	Addressed. See response to 114.

119	5		Further, OPIC should explicitly adopt the IFC's requirement that for all projects with significant adverse impacts the client's process of free, prior, and informed consultation result in broad community support for the project. The standard should be higher for projects that impact indigenous communities, requiring the free prior and informed consent (FPIC) of the community. Requiring FPIC for projects impacting indigenous peoples would be consistent with the indigenous peoples' policies of the EBRD and the ADB.	Addressed. See response to comment 93.
120	5	5.11	OPIC should disclose the project specific requirements for all Category A and B projects. As it is unclear from the outset what requirements OPIC might apply to any given project, the project summaries posted on OPIC's website should explicitly disclose policies that have been triggered and what environmental and social provisions have been included in the legal agreement for each Category A and B project. As described above, requiring the same level of information disclosure for Category A and B projects will reduce the incentive to miscategorize projects.	Project summaries that are posted on the OPIC web site identify the performance standards that projects are required to meet. Any additional requirements or restrictions to be included in OPIC agreements also are identified in the project summaries. Final ESAPs for Category A projects also are posted on the OPIC web site. OPIC believes that sufficient information is contained within the project summaries to allow interested parties to confirm the correct categorization of the project.
121	5	5.11	Public disclosure of environmental and social management: ESPS Section 3.1 outlines elements included in Environmental and Social Management Systems, including environmental and social action plans, monitoring and reporting performance results. The ESPS should include an explicit requirement that all these documents should be publicly disclosed.	Consistent with the provisions contained within the Performance Standards, the policy statement emphasizes that that the disclosure of project-related information is primarily the responsibility of the investor. Performance Standard 1 requires investors to disclose several documents and to periodically inform affected stakeholders on issues related to environmental and social performance.
122	5	5.12	Section 5.12 states that the [third party] auditor certification and a publically releasable summary of audit findings are disclosed on the OPIC web site but are not subject to a designated comment period. We believe that OPIC previously committed to disclosing the audit, not just a summary.	OPIC has agreed to disclose (1) audit certifications and (2) a summary of audit findings.
123	5	5.12	Free, prior and informed consent: The policy should ensure that projects do not go forward unless affected communities have demonstrated their free, prior and informed consent in a culturally appropriate manner.	Addressed. See response to comment 93.

124	5	5.12	Disclosure of third-party audit: Section 5.12 of the Draft Policy states that "The [third party] auditor certification and a publically releasable summary of audit findings are disclosed on the OPIC web site but are not subject to a designated comment period." OPIC should disclose the audit in its entirety (redacted if necessary as is consistent with FOIA procedures) not just a summary. Development of a summary places an unnecessary burden on OPIC or the third party.	Addressed. See response to comment 122.
125	5	5.12	Along with participation and consent, OPIC should also not rely so extensively and almost exclusively on information from clients to determine if clients are in compliance with the Policy. This presents a conflict of interest. Rather, more emphasis should be placed on OPIC's own site visits and independent due diligence based on a third party verification. This third party verification should be based on information from other than project sponsors prior to project approval and during the monitoring phase.	OPIC agrees and has taken steps to strengthen and expand the environmental and social monitoring program, including pre-approval site visits. OPIC also is putting in place consulting contracts to provide additional support.
126	5	5.12	Section 5.12 calls for the "auditor certification and a publicly releasable summary of audit findings". However, OPIC previously committed to disclosing the audit, not just a summary.	Addressed. See response to comment 122.
127	5	5.12	5.12. Audits. We support OPIC's requirement that Category A project Applicants conduct and certify that a third-party audit has occurred. Additionally, OPIC should require the disclosure of the full audit, rather than just a summary as stated in paragraph 5.12.	Addressed. See response to comment 122.
128	5	5.14	Also, the agency should require funds to publish a list of investments in their portfolio, as not all OPIC investment funds make this information publicly available.	OPIC-supported Investment Fund portfolio activity is posted quarterly on the OPIC web site ( <a href="http://www.opic.gov/projects/non-board">http://www.opic.gov/projects/non-board</a> )

129	5	5.14	<p>5.14. Category B, C and D projects. OPIC should require disclosure and consultation with affected communities for Category B, C, and D projects to the extent there are any potential impacts on the community. The scale and scope of the consultation should be reflective of the potential risks. Most importantly, the decision to categorize a project as B, C or D should be made public as soon as it is made and should be subject to public consultation.</p> <p>OPIC also should enhance its requirements regarding the nature of the consultations to ensure that they are meaningful. We support OPIC's requirement that "environmental and social information should be made available to the project affected people in a language, format, and medium that is accessible" and facilitates the "free expression of opinions." However, while OPIC requires these steps and notes the importance of consultation, it does not provide any minimum rules or requirements about the nature of this consultation. Paragraph 5.5, offers references to further guidance on how to conduct meaningful public consultation, but does not require Project Applicants to follow any of these standards. As written, OPIC only requires some form of consultation, which seemingly could be one-way informational briefings. OPIC should require that consultations find suitable methods for facilitating oral or written</p>	Addressed. See response to comment 101.
130	5	5.14	<p>In general, OPIC should commit to openness and transparency as a "default position," rather than as an exception. OPIC and its clients currently assume that all client and project information is confidential unless otherwise stated. Specifically, OPIC should require disclosure of environmental and social action plans, monitoring reports, audits, and environmental and social loan covenants. Project affected communities can benefit greatly from knowing what environmental and social obligations clients and projects are supposed to fulfill, and what safeguards should be afforded through proper implementation of OPIC covenants.</p>	Addressed. See response to comment 116.

131	6		Reporting on project performance: Section 6.3 of the Draft Policy requires clients to prepare and submit to OPIC an annual environmental and social report summarizing the environmental and social performance of the project over the preceding year to demonstrate compliance with OPIC agreement conditions. However, OPIC's current policy stipulates that project clients that do not comply with this requirement will have to conduct an independent third party audit. A failure to include reference to a third party audit violates HR 3288 which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009."	The requested text has been incorporated into the revision, with the proviso that the failure to submit the required report is not deemed an incurable default. In the event of an incurable default, OPIC would pursue other remedies including insurance contract termination, acceleration of loan repayment or divestiture.
132	6		OPIC must clarify its own project duties and responsibilities more clearly. For example, OPIC commits to follow the IFC Performance Standards (which apply to clients), but does not have an internal sustainability policy like IFC (which applies to the IFC). This weakens OPIC accountability and the ability of the Office of Accountability to review OPIC compliance with its own policies. A clarification of OPIC's role is needed whereby policy provisions spell out OPIC compliance requirements.	The text has been revised to clearly differentiate OPIC and Applicant responsibilities.
133	6	6.0	OPIC should not rely exclusively on material representations of its clients in its environmental and social review. Rather, OPIC should undertake its own investigation to ensure that its evaluation is based on accurate, independent information.	The text has been revised to clarify that OPIC relies, in part, on material representations made by Applicants. It should be noted that Applicants are required to certify, under penalty of law, that all statements and information provide in applications are true and correct.
134	6	6.0	More importantly, environmental and social requirements of the client must be included in its legal agreements for all Category A and B projects. It is not enough that these provisions "may be" or "typically" are included in OPIC agreements. The extent to which OPIC is seriously committed to its environmental and social policy is demonstrated by whether it includes environmental and social provisions in its legal agreements with clients. This is especially true when OPIC monitors only requirements included in OPIC agreements, as stated in paragraph 7.0.	The text has been revised to clarify that all environmental and social requirements are incorporated in legal agreements.

135	6	6.0	Further, OPIC agreements should also require that OPIC clients cooperate with the Office of Accountability should any complaints be filed. It would be appropriate in this section of the Policy Statement to include additional information regarding the functions of the Office of Accountability so as to alert Applicants and project-affected communities to its existence.	OPIC's agreements with investors contain general requirements to provide information and to cooperate with OPIC to satisfy policy requirements. Such comprehensive requirements are a better approach than obligations to cooperate for specific reasons or with particular offices within OPIC. OPIC has included contact information for the Office of Accountability within the revised ESPS.
136	6	6.0	Conflicts of interest in relying on client information Our experiences with the World Bank, IFC, and other public financial institutions have demonstrated that an over-reliance on client information leads to ineffective implementation. Rather, for all projects OPIC should also commit to using third party monitoring of information, as well as third party sources of information. This is particularly important when verifying the quality of community engagement and FPIC/broad community support processes.	Addressed. See response to comment 133.
137	6	6.0	Disclosure of OPIC's involvement In its financing covenants OPIC should require clients to disclose to affected communities that: (1) they have received financing from OPIC; and (2) OPIC has an Accountability Office that accepts grievances	Language has been added to Section 5 of the Policy Statement to address the comment.
138	6	6.1	OPIC should also explicitly state that project specific requirements will be included in OPIC's legal agreements, including compliance with the ESAP, environmental and social reporting, ongoing stakeholder engagement, periodic audits by independent specialists, the inclusion of environmental performance criteria in the definition of "project completion," and monitoring visits by OPIC personnel or representatives. Legal agreements should also include, where appropriate, remedies OPIC can pursue in the event a client fails to comply with environmental or social provisions during the term of the legal agreements.	The text has been revised to clarify that all environmental and social requirements are incorporated in legal agreements. OPIC legal agreement templates do identify remedies and failure to comply with OPIC's environmental and social conditions is defined as an event of default within those templates.
139	6	6.1	The project specific requirements, including the relevant provisions in the legal agreement, should be made public on OPIC's website for all Category A and B projects.	OPIC provides information within the project summaries on (1) standards applicable to a project and (2) any additional required mitigation, reporting and monitoring.

140	6	6.2	6.2. We fully support the statement that OPIC requires compliance of all conditions, covenants and representations “regardless of whether or not the Applicant has a controlling interest in the project”. This has been a recurring problem at the IFC. OPIC may have to take additional steps to ensure it has leverage to ensure that the project complies with OPIC conditions. At the very least, OPIC must be satisfied that all project participants know about OPIC standards and have agreed to meet them.	Noted
141	6	6.3	Reporting on project performance: ESPS Section 6.3 requires clients to prepare and submit to OPIC an annual report summarizing the environmental and social performance of the project over the preceding year to demonstrate compliance with OPIC agreement conditions. Apparently omitted from this requirement is a provision in OPIC’s current policy which states: Category A projects will be required to conduct further certified independent audits if the investor fails to submit contractually required annual self-monitoring reports in a timely manner or if monitoring trips or other information indicates a need for further independent audits. This omission violates HR 3288 which states that OPIC’s revised environmental and social policy shall be “no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009” (OPIC’s current policy).	Addressed. See response to comment 131.
142	6	6.3	Disclosure of third-party audit: Section 5.12 of the Draft Policy states that “The [third party] auditor certification and a publically releasable summary of audit findings are disclosed on the OPIC web site but are not subject to a designated comment period.” OPIC should disclose the audit in its entirety (redacted if necessary as is consistent with FOIA procedures) not just a summary. Development of a summary places an unnecessary burden on OPIC or the third party.	Addressed. See response to comment 122.

143	6	6.3	In addition, Section 6.3 instructs clients to prepare and submit to OPIC an annual environmental and social report summarizing the environmental and social performance of the project over the preceding year to demonstrate compliance with OPIC agreement conditions. Omitted from this is a provision in OPIC's current policy which stipulates that project clients that do not comply with this requirement will have to conduct an independent third party audit. This omission violates H.R. 3288 that states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available."	Addressed. See response to comment 131.
144	6	6.3	The OPIC policy should state more clearly that OPIC will give all clients the ESP and that all clients will be held responsible for ensuring that their projects meet the applicable standards found in the ESP as well as the policies relating to worker and human rights. Compliance with the ESP and related requirements should be made an explicit condition in all OPIC financial instruments, and a client's failure to comply with the ESP and related requirements should be a material breach of any agreement between OPIC and the client.	Addressed. See response to comment 138.
145	6	6.3	6.3 OPIC requires clients to prepare and submit an annual environmental and social report that summarizes the environmental and social performance of the project to show that it's in compliance with its agreement with OPIC. OPIC's current policy requires an independent third-party audit if clients do not submit their annual report. This omission from the current policy appears to violate HR 3288, which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009."	Addressed. See response to comment 131.
146	6	6.3	More importantly, environmental and social requirements of the client must be included in its legal agreements for all Category A and B projects. It is not enough that these provisions "may be" or "typically" are included in OPIC agreements. The extent to which OPIC is seriously committed to its environmental and social policy is demonstrated by whether it includes environmental and social provisions in its legal agreements with clients. This is especially true when OPIC monitors only requirements included in OPIC agreements, as stated in paragraph 7.0.	Addressed. See response to comment 138.

147	6	6.3	Section 6.3 requires clients to submit an annual environmental and social report. This draft policy statement does not require the project to conduct further certified independent audits if it fails to file an annual report. The dropping of this import provision for current OPIC requirements violates HR 3288 which does not allow for a reduction of standards in its social and environmental guidelines.	Addressed. See response to comment 131.
148	7		In addition, several other documents should be routinely disclosed, including the client's annual environmental and social report submitted to OPIC for all Category A and B projects, reports from on-site monitoring (paragraph 7.2), and the full reports from third-party auditors (paragraph 7.5).	Under Performance Standard 1 Applicants are required to report to project affected people on progress with implementation of the Action Plan. OPIC has agreed to post on our website (1) OPIC staff site visit summaries and (2) summaries of audit findings.
149	7		And, I urge you to increase transparency of project environmental and social documentation including disclosure of all project monitoring reports.	Addressed. See response to comment 148.
150	7		Disclosure of monitoring reports: Section 7 of the Draft Policy describes monitoring requirements but should also stipulate that all monitoring documents must be publicly disclosed.	Addressed. See response to comment 148.
151	7		In addition to the description of the monitoring requirements, all monitoring reports must be publicly disclosed.	Addressed. See response to comment 148.
152	7		In addition, in cases of heightened risk or where community complaints are received, OPIC should have in place a means to independently assess the situation. While some monitoring can be based on receipt of information from the client company, OPIC should have a system for assessing reports from clients and conducting independent verification exercises where appropriate.	Noted. OPIC does independently verify information received from investors. In the case of complaints or heightened risk, OPIC can and does request US Embassy assistance to investigate.
153	7	7.0	Community trust in information provided to them According to this section, OPIC commits to monitor implementation of projects for its own purposes. But monitoring should also be used to assure communities that promises made to them are kept. In particular, communities should have opportunities to participate in monitoring of the environmental and social action plan, or should have the opportunity to identify a trusted source who can participate in the monitoring on their behalf.	OPIC agrees. We will require that Stakeholder Engagement Plans required under Performance Standard 1 address community participation in monitoring.

154	7	7.0	It should be made clear that all category A and B projects should be routinely monitored, as opposed to on the basis of a discretionary prioritisation of projects, as currently suggested in the draft ESPS. In particular OPIC should commit to its own site visits, starting at the initial phase of projects and at programmed intervals throughout OPIC's participation in the project	Despite resource constraints OPIC has made a strong commitment to increasing the number of projects that are site-monitored. Over the past 3 years OPIC's policy group has increased the number of visited projects by 36% and in 2009 visited approximately 10% of the projects and subprojects in OPIC's active portfolio. OPIC also is hiring consultants that will enable more projects to be monitored on a more frequent basis. OPIC will evaluate whether it is possible to commit to fixed program interval and/or visiting all projects during the construction phase.
155	7	7.0	Section 7: Monitoring  OPIC should commit to the requirement that its staff or independent consultants conduct on-site monitoring of all Category A and B projects during the construction phase of the project. Additionally, OPIC should require programmed intervals of on-site monitoring by OPIC staff or third-party auditors. Monitoring is a key part of ensuring compliance with the environmental and social standards, and relying solely on the client to monitor its own project is not reliable.  Additionally, OPIC must require disclosure of all monitoring documents. Further, OPIC should require the disclosure of complete third-party audits, and not just their summaries as stated in paragraph 7.6.	Addressed. See responses to comments 148 and 154.
156	7	7.0	Additionally, OPIC must require disclosure of all monitoring documents. Further, OPIC should require the disclosure of complete third-party audits, and not just their summaries as stated in paragraph 7.6.	Addressed. See response to comment 148.
157	7	7.2	Also, OPIC should commit to conducting on-site monitoring of all Category A and B projects by staff or independent consultants during the project construction phase, when negative environmental and social impacts can be at their highest, and which may be complete prior to the three year window for monitoring in OPIC's current policy.	Addressed. See response to comment 154.
158	7	7.2	In addition to increased project monitoring, the ESPS should require that all monitoring documents be publicly disclosed.	Addressed. See response to comment 148.

159	7	7.2	<p>Monitoring: OPIC's current environmental policy states that OPIC "endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project." OPIC's Draft Policy is more vague, stating that "OPIC conducts on-site monitoring of projects for environmental and social performance. Projects selected for monitoring in a given year are prioritized based on environmental and social risk." This creates a contradiction between Section 7 of the Draft Policy and HR 3288 which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009." Moreover, OPIC should commit to conducting its own site monitoring of Category A and B projects by staff or independent consultants during the construction phase of projects (when negative environmental and social impacts can be at their highest) and at programmed intervals throughout OPIC's participation in the project.</p>	<p>The referenced text has been reinserted, but slightly modified to reference contract execution instead of commitment. Applicants are not legally obligated to implement the OPIC requirements until the OPIC agreements are executed.</p>
160	7	7.2	<p>OPIC's current Environmental Policy states that OPIC "endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project." In contrast, OPIC's Draft Policy is more vague, stating that "OPIC conducts on-site monitoring of projects for environmental and social performance. Projects selected for monitoring in a given year are prioritized based on environmental and social risk." This creates a contradiction between section 7 and H.R. 3288, which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009." Moreover, OPIC should commit to conducting its own site monitoring of Category A and B projects by staff or independent consultants during the construction phase of projects (when negative environmental and social impacts can be at their highest) and at regular intervals throughout OPIC's participation in the project.</p>	<p>Addressed. See response to comment 159.</p>

161	7	7.2	It should be made clear that all category A and B projects should be routinely monitored, as opposed to on the basis of a discretionary prioritisation of projects, as currently suggested in the draft ESPS. In particular OPIC should commit to its own site visits, starting at the initial phase of projects and at programmed intervals throughout OPIC's participation in the project	Addressed See response to comment 154.
162	7	7.2	It should be made clear that all category A and B projects should be routinely monitored, as opposed to on the basis of a discretionary prioritisation of projects, as currently suggested in the draft ESPS. In particular OPIC should commit to its own site visits, starting at the initial phase of projects and at programmed intervals throughout OPIC's participation in the project	Addressed. See response to comment 154.
163	7	7.2	Community trust in information provided to them according to this section, OPIC commits to monitor implementation of projects for its own purposes. But monitoring should also be used to assure communities that promises made to them are kept. In particular, communities should have opportunities to participate in monitoring of the environmental and social action plan, or should have the opportunity to identify a trusted source who can participate in the monitoring on their behalf.	Consistent with the requirements of Performance Standard 1, OPIC will encourage investors to involve affected communities in monitoring, where appropriate.
164	8		The ESPS encourages clients to utilize renewable and energy efficiency technologies. OPIC seeks to develop financial incentives for small and medium sized enterprises. We support this, and encourage more creative engagement and partnerships with other agencies and partners.	Noted
165	8	8.0	We incorporate by reference comments submitted by Pacific Environment on March 19, 2010 with regard to climate change and renewable energy.	Noted
166	8	8.0	Unclear language After speaking with you, we now understand the purpose of Section 8.5. However, we strongly recommend that you reword this provision. As currently worded, it creates potential loopholes for coal and other emissions intensive technology to be given an emission level of zero.	Addressed. OPIC is committed to supporting renewable energy and clean technology. The intent of the original paragraph was to incentivize investments in these areas. OPIC agrees that the original definition of "clean technology" could be interpreted to allow for support of energy intensive projects. The definition has been modified, examples of eligible projects provided, and fossil fuel power generation is explicitly ineligible under the definition. We have also added a reduction threshold requirement as well as a requirement for an annual third party audit.

167	8	8.0	<p>We recommend that OPIC's greenhouse gas accounting methodology meet best practices, as identified by WRI's Greenhouse Gas Protocol. In particular, the U.S. Environmental Protection Agency has recommended that the baseline for accounting should be 25,000 tonnes of CO2 eq/year. While we take the point that only a small number of investments in OPIC's portfolio meet this range, we recommend that you adopt the U.S. government position for the sake of consistency. Furthermore, we recommend that you extend "direct emissions" to include life cycle analysis on projects (including Scope 3 emissions).</p>	<p>OPIC agrees that it appropriate and consistent to adopt 25,000 metric tonnes of CO2eq/year as the accounting and reporting threshold and OPIC has evaluated the baseline portfolio (as of June 30, 2008) and identified 13 additional projects for inclusion in the baseline. OPIC will adjust the accounting and reporting system to capture all new projects with the potential to emit greater than 25,000 metric tonnes CO2eq/year. OPIC agrees that lifecycle analyses are appropriate for renewable fuel projects to be consistent with the EPA Renewable Fuels Standard and this requirement has been added to a new paragraph in Section 3 of the Policy Statement.</p>
168	8	8.0	<p>Studies are emerging that suggest that methane emissions from large hydropower are sources of high levels of GHG emissions. Regardless of the climate impacts, however, large hydropower has a history of profoundly harmful environmental and social risks - such as the impacts of involuntary displacement. We encourage OPIC to exclude large hydropower from consideration for financing.</p>	<p>The definition of "renewable energy" has been modified to exclude hydropower projects that are categorically prohibited under OPIC's policy.</p>
169	8	8.0	<p>Preferential incentives for renewable energy and energy efficiency We commend OPIC for your efforts to develop preferential incentives, in order to encourage small and medium sized enterprises to adopt cleaner technologies. As you have not developed these incentives yet, we understand why the language in the policy statement is weak (clients "are encouraged" and "should explore opportunities"). However, as this policy statement will likely be in effect for several years, we recommend that you strengthen the language to the degree possible, to signal that you intend to provide preferential incentives.</p>	<p>OPIC agrees. The language has been strengthened to require investors to evaluate alternatives and to adopt more energy efficient alternatives when those alternatives are technically and financially feasible and cost effective.</p>
170	8	8.1	<p>I urge you to protect and expand OPIC's draft Environmental and Social Policy provisions that reduce the agency's portfolio of greenhouse gases by 30% in ten years and 50% in fifteen years. Given the severity of climate change, these percentage should be increased and support for fossil fuel projects should be ended.</p>	<p>Noted. The current reduction goals reflect statutory requirements contained within the Omnibus Appropriations Act of 2009.</p>

171	8	8.1	Greenhouse Gas Emissions Threshold: OPIC currently sets a schedule for reductions in greenhouse gas emissions in its active portfolio for those projects that emit more than 100,000 tons of CO2-eq. per year. OPIC should adopt a best practice threshold, as determined by the U.S. Environmental Protection Agency, of 25,000 tons of CO2-eq. per year (see <a href="http://www.epa.gov/climatechange/emissions/ghgrulemaking.html">www.epa.gov/climatechange/emissions/ghgrulemaking.html</a> ).	Addressed. See response to comment 167.
172	8	8.1	OPIC's draft policy includes accounting for project direct emissions. However, OPIC should adopt best practices and expand greenhouse gas emissions accounting to include indirect emissions, such as downstream or lifecycle emissions, which for fossil fuel extraction, refining and transportation projects will include the emissions that result from the ultimate combustion of the fossil fuel made possible by OPIC support. This can help OPIC make decisions on whether or not to approve projects based on total lifecycle emissions, which in some instances (e.g., liquid natural gas schemes) are far greater than direct project emissions may imply.	OPIC designed the accounting and reporting system to track progress in achievement of the portfolio reduction goals - which only relate to direct emissions. OPIC recognizes that indirect emissions accounting is required under the IFC Performance Standards and we have highlighted that requirement in the final version of the policy statement. OPIC has also strengthened the requirement related to consideration of energy efficiency alternatives, which will result in indirect emission reductions. Consistent with the US Renewable Fuels Standards, we have added a requirement for life cycle assessment in renewable fuels projects.
173	8	8.1	Robust greenhouse gas accounting: OPIC currently accounts for direct emissions in its active portfolio for those projects that emit more than 100,000 tonnes of CO2-eq. per year. Best practice is to also account for indirect emissions across the life cycle of projects. The best practice threshold, as determined by the U.S. Environmental Protection Agency, is 25,000 tonnes of CO2-eq. per year. For more information, please see: <a href="http://www.epa.gov/climatechange/emissions/ghgrulemaking.html">http://www.epa.gov/climatechange/emissions/ghgrulemaking.html</a> .	Addressed. See response to comment 167.

174	8	8.1	<p>The draft Policy Statement's proposed definition of "active portfolio" includes "all insurance contracts in force and guaranty and direct loans with an outstanding principal balance," without regard for how the level of OPIC's financial involvement in a particular project compares to that project's total cost. OPIC has thus proposed an unusually broad scope of its portfolio that captures the direct, on-site emissions from all projects in which OPIC has any involvement as of June 30, 2008 whose direct emissions exceed 100,000 tons of CO<sub>2</sub>eq per year.<sup>10</sup> In other words, no matter how low the level of OPIC's financial commitment to a particular project may be in comparison to the total costs of the project, the draft Policy Statement would require OPIC to assume all the direct emissions associated with that project. Adhering to such an "in for a dime, in for a dollar" policy artificially inflates the level of greenhouse gas emissions associated with OPIC's commitments and diverges from internationally accepted accounting methods under the Greenhouse Gas Protocol. This overly conservative approach effectively would likely preclude OPIC from providing support to otherwise important energy infrastructure projects, which would be inconsistent with OPIC's statutory mission to mobilize participation of U.S. private capital and skills in the economic and social development of less developed countries and areas. ContourGlobal believes that OPIC should (and could, consistent with its statutory and</p>	<p>OPIC agrees that the WRI Greenhouse Gas Protocol identifies two general approaches to defining operational boundaries for voluntary reporting of GHG emissions: operational control and financial control. These approaches were designed to prevent double counting the same emissions within inventories. OPIC's accounting system is designed for a different purpose: to track progress toward achievement of the portfolio emission reduction goals. As long as OPIC maintains the same operational boundary definition during each reporting cycles throughout the 15 year period, the operational boundary definition (100% of direct emissions) is valid.</p>
175	8	8.1	<p><del>other legal obligations) refine its calculation of the greenhouse</del>  The draft Policy Statement does not address whether or how OPIC will screen and categorize a group of projects for which a sponsor seeks OPIC support. OPIC presumably will evaluate and screen each project on an individual basis rather than aggregating them for purposes categorizing the projects for review purposes or for counting emissions for cap purposes. Aggregating a bundle of smaller projects across a sponsor's portfolio could have the unintentional effect of discouraging developers from seeking OPIC support for a portfolio of proposed projects (e.g., on the basis that OPIC is cap-constrained from supporting the projects, whereas it may be in a position to support at least several of the projects on an individual basis because emissions from the abbreviated group may remain under the cap).</p>	<p>OPIC agrees that bundling smaller projects may be the only cost-effective means to obtain financing. OPIC will screen projects on an individual basis rather than aggregating for the purposes of categorizing and accounting for emissions. To further clarify OPIC has provided a new definition of "project" in the glossary, which is intended, in part, to prevent artificial segmentation of projects to avoid Category A screening determinations.</p>

176	8	8.1	Greenhouse Gas Emissions Threshold: OPIC currently sets a schedule for reductions in greenhouse gas emissions in its active portfolio for those projects that emit more than 100,000 tons of CO2-eq. per year. OPIC should adopt a best practice threshold, as determined by the U.S. Environmental Protection Agency, of 25,000 tons of CO2-eq. per year (see <a href="http://www.epa.gov/climatechange/emissions/ghgrulemaking.html">www.epa.gov/climatechange/emissions/ghgrulemaking.html</a> ).	Addressed. See response to comment 167.
177	8	8.1	OPIC's draft policy includes accounting for project direct emissions. However, OPIC should adopt best practices and expand greenhouse gas emissions accounting to include indirect emissions, such as downstream or lifecycle emissions, which for fossil fuel extraction, refining and transportation projects will include the emissions that result from the ultimate combustion of the fossil fuel made possible by OPIC support. This can help OPIC make decisions on whether or not to approve projects based on total lifecycle emissions, which in some instances (e.g., liquid natural gas schemes) are far greater than direct project emissions may imply.	Addressed. See response to comment 172.
178	8	8.2	OPIC currently accounts for direct emission in its active portfolio for those projects that emit more than 100,000 tonnes of CO2-eq. per year. Best practice required that OPIC also account for indirect emissions across the life cycle of projects. According to the US Environmental Protection Agency, the best practice threshold is 25,000 tonnes of CO2-eq. per year.	Addressed. See response to comment 167.
179	8	8.2	With respect to greenhouse gas accounting, we urge the agency to calculate not only the indirect and lifecycle emissions associated with its projects, but to also lower the accounting threshold. Currently, the agency measures direct emissions for projects that emit over 100,000 tons of CO2 equivalent annually. In contrast, the EPA accounts for projects emitting 25,000 tons or more, and we urge OPIC to adopt that lower threshold.	Addressed. See response to comment 167.
180	8	8.2	Incentives for energy efficiency and renewables: The Draft Policy encourages clients to pursue renewable and energy efficiency technologies. OPIC is developing financial incentives for small and medium sized enterprises to integrate these approaches into its projects. This, and more creative engagement and partnerships with other agencies and partners should be encouraged.	Noted

181	8	8.3	<p>OPIC's Proposed Annual Transactional Emissions Cap Will Limit OPIC Support For Thermal Power Projects To Several Hundred Megawatts Per Year. OPIC's statutory mission is to mobilize private U.S. investment in less developed countries and areas. ContourGlobal seeks to develop efficient new thermal power projects in areas that are critically underserved. OPIC's proposed annual transactional emissions cap, however, will effectively limit its support for thermal power projects to several hundred MW per year, effectively shutting down its support for new projects in the least developed areas that need the projects the most. Moreover, OPIC's proposal ignores the fact that such new projects will displace higher emitting emission sources and result in cumulative net reductions in greenhouse gas emissions. OPIC has no legal obligation to impose an annual transactional emissions cap, which is fundamentally inconsistent with OPIC's statutory mission to facilitate investment in poorer nations. OPIC should eliminate this mechanism from its final Policy Statement, and also clarify that it will credit emission reductions resulting from displacement of higher emitting sources by the new projects OPIC supports.</p>	<p>OPIC has many objectives and requirements that can be difficult to reconcile in a particular situation. The greenhouse gas initiative was consistent with a broader U.S. government initiative, as well as OPIC's long standing environmental priorities. Meeting objectives by setting annual limits was within agency discretion and a valid means of ensuring that real reductions would be achieved by the established target dates. The comment that this approach undermines OPIC's ability to support categories of projects that would be developmental may be valid, but adherence to other legal and policy requirements has also precluded support for other projects that could be developmental. OPIC is subject to conflicting objectives and requirements.</p>
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182	8	8.3	<p>OPIC's draft Policy Statement proposes to establish an annual transactional emissionscap for all new projects within a given year with significant, direct greenhouse gas emissions (defined as over 100,000 tons CO2eq per year). Stuningly, OPIC's proposed transactional cap would limit OPIC support for thermal projects to no more than several hundred MW per year, thus excluding from OPIC's consideration nearly all meritorious thermal projects. As a result, OPIC's proposed Policy Statement would effectively shut down its support for thermal power projects in the world's least developed countries. In order for OPIC to satisfy its mandate to participate in economically viable projects in countries that are in need of energy infrastructure projects, OPIC should apply its Policy Statement to individual projects flexibly and in a manner focused primarily upon its mission to catalyze development in the world's least developed countries. As currently drafted, OPIC's Policy Statement and its interpretation of its greenhouse gas emission reduction targets directly conflicts with its mission statement and has the unintended effect of punishing societies that are least able to afford purely renewable energy.</p> <p>OPIC's draft Policy Statement proposes to apply an annual aggregate CO2 equivalent ("CO2eq") emissions cap to new transactions. But this cap is far too low for OPIC to continue to support energy infrastructure projects in the developing world, particularly in sub-Saharan Africa where less than 20% of the population has access to electricity. OPIC should not refuse to support important new projects that would exceed the annual transactional emissions cap. Doing so would violate its own mission statement and substitute reducing absolute greenhouse gas emissions for development as its primary objective. OPIC's draft Policy Statement and its proposed annual aggregate CO2</p>	<p>See response to Comment 181. The annual transactional cap is indeed small, but that is necessary for OPIC to achieve the statutorily mandated portfolio reduction goals. Based on current estimates, OPIC believes that the Agency may only add an additional 21 million tons of CO2eq emissions to the portfolio between now and 2023 if it is to meet the mandated reduction goals. The policy does not prohibit OPIC from supporting thermal power projects - it merely constrains the number of new thermal power projects that can be added to the portfolio in the next 13 years.</p>
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183	8	8.3	<p>OPIC does not have either a statutory or other legal obligation to establish any such annual cap, let alone a cap that will shut down OPIC support for new thermal projects in less developed nations. Moreover, as noted above, implementing a rigid annual transactional emissions cap would directly contradict OPIC's broader mission to support development in poorer nations. First, while OPIC has a statutory obligation to implement a revised climate change mitigation plan to reduce greenhouse gas emissions associated with projects and sub-projects in the agency's portfolio by 2018 and 2023 target dates,<sup>3</sup> that statutory mandate does not direct OPIC to establish yearly transactional caps that would eliminate from OPIC's consideration new projects that would serve less developed nations. That statute does not dictate how OPIC must achieve its emission reduction obligations by the June 30, 2018 and 2023 deadlines.</p>	<p>See response to comment 181. Although there are several management tools that OPIC could have used to achieve the portfolio reduction goals, the annual transactional cap was viewed as the simplest, most transparent mechanism.</p>
184	8	8.3	<p>Second, OPIC's settlement agreement with Friends of the Earth, et al. last year also does not preclude OPIC's ability to support new thermal projects. Under that settlement, OPIC agreed to reduce by 20 percent over the next ten years the greenhouse gas emissions associated with projects that emit more than 100,000 tons of CO<sub>2</sub>eq per year in OPIC's portfolio (as of 2008).</p> <p>While OPIC agreed to limit new investment in projects that emit greenhouse gases, it is in no sense precluded from supporting such projects. Moreover, the settlement agreement clearly states that it is not meant to trump or cause OPIC to take actions inconsistent with its statutory mandate. Therefore, the settlement agreement also does not obligate OPIC to establish an annual transactional cap.</p> <p>Third, a firm annual transactional emissions cap that acts as an unnecessary barrier to OPIC's support of new thermal projects is fundamentally inconsistent with OPIC's mission and U.S. policy objectives to foster American investment in less developed markets throughout the world. 22 U.S.C. § 2191 (stating that OPIC's mission to mobilize the participation of United States private capital in less developed nations is "thereby complementing the development assistance objectives of the United States."); 42 U.S.C. § 17334 ("It is the sense of Congress that [OPIC] should promote greater investment in clean and efficient energy technology by . . . providing greater flexibility in supporting projects that involve the investment or utilization of clean and efficient energy technologies, including financing, insurance and other assistance.");</p>	<p>See response to Comment 181.</p>

185	8	8.3	<p>ContourGlobal supports OPIC's proposal that, for years in which the annual emissions associated with OPIC committed projects are less than the annual cap for that year, the remaining capacity may be allocated to subsequent years.<sup>13</sup> As discussed above, ContourGlobal supports flexible approaches to the implementation of OPIC's greenhouse gas reduction policies. To that end, ContourGlobal also recommends that OPIC consider clarifying in its Policy Statement that it may exercise its discretion to allocate emissions from later years to current projects in order to bring desirable projects to the less developed markets without running into artificial cap constraints.</p>	<p>Borrowing cap from the future is not a sound budgetary principle. It would also tie the hands of the current and future administration to effectly respond to future foreign policy priorities.</p>
186	8	8.5	<p>Section 8.5 states:  Projects involving renewable energy or "clean energy technology" are assigned a greenhouse gas emission level of zero for the purpose of this policy. "Clean energy technology" is defined as an energy supply or end use technology which, compared to a similar technology already in widespread commercial use in a host country, will reduce emissions of greenhouse gases or decrease the intensity of energy usage. It is our understanding that this provision is intended to preclude projects from being assigned negative emissions if a project's emissions are lower, or intensity of a project's energy use is less than that which is already in widespread commercial use in a host country. However, this provision implies some greenhouse gas emitting projects could be assigned an emissions level of zero, and thus not count toward OPIC's total portfolio emissions cap and reductions levels, which effectively allows for a net increase in total portfolio emissions levels. This interpretation would demonstrate a violation of HR 3288, which does not provide for such an exemption. We urge that this paragraph be re-written to clarify that it is not OPIC's intention to assign negative or zero emissions to projects for the purposes of measuring project emissions toward cap and reduction levels, rather that all project emissions otherwise meeting OPIC climate change policy thresholds be counted.</p>	<p>Addressed. See response to comment 166.</p>
187	8	8.5	<p>The ESPS defines renewable energy as including hydropower, however large hydropower projects are increasingly understood to not be sustainable, thus not renewable. Meanwhile, the ESPS defines renewable energy to include various forms of biomass, however some biomass energy emits significant amounts of greenhouse gasses and therefore should be excluded from this definition.</p>	<p>OPIC agrees. The definition of "renewable energy" has been modified to exclude hydropower projects that are categorically prohibited under OPIC's policy. OPIC has also added a new paragraph 3.28 that addresses renewable fuels.</p>

188	8	8.5	<p>Loopholes for coal: Section 8.5 of the Draft Policy is intended to ensure that OPIC's clients cannot claim that a project has "negative" emissions. However, the language in this section creates a potential loophole that would allow OPIC to assign some coal and other high greenhouse gas-emitting projects an emissions level of zero. We recommend that this entire paragraph be deleted.</p>	<p>Addressed. See response to comment 166.</p>
189	8	8.5	<p>OPIC Should Broadly Interpret The Term "Clean Energy Technologies." Under the proposed Policy Statement, "clean energy technologies" would be assigned a greenhouse gas emission value of zero. Such technologies, however, would include only those sited where there is a comparable technology in widespread use in the host country. As discussed below, in some areas of world, there may be no "comparable technology in widespread use," such that a clean energy technology may not otherwise qualify as such under OPIC's policy. In that regard, OPIC's policy may have the unintended effect of discouraging investments in clean energy technologies in less developed areas, with the result being the development of higher greenhouse gas emitting sources. Accordingly, OPIC's Policy Statement should clarify that "clean energy technologies" are not limited to those cited where there are already comparable technologies in widespread commercial use. Furthermore, OPIC should interpret "clean energy technologies" to include those that result in a net reduction of greenhouse gas emissions through displacement of higher emitting sources.</p>	<p>OPIC received several comments on this provision and we agree that the definition did not support the intent of the provision. As noted in the response to comment 166 above, the purpose of the original paragraph in the draft ESPS was to incentivize investments in energy efficient technology that would lead to significant reductions in electricity use and/or significant reductions in direct greenhouse gas emissions. It was not OPIC's intent that this provision be used to enable zero accounting on displacement strategies. The difficulty in applying the provision to displacement strategies is (1) the actual displaced emissions cannot be accurately estimated and verified on an on-going basis and (2) the private sector investor often times does not have management or ownership control over the displaced asset.</p>

190	8	8.5	<p>It appears that OPIC's proposed Policy Statement would not permit OPIC to take credit for greenhouse gas emission reductions through displacement of higher emitting power sources by efficient new thermal power projects that OPIC supports. It is axiomatic that new low carbon emitting energy projects (such as ContourGlobal's Togo and CHP projects) will displace less efficient, higher emitting energy sources in these underserved areas – whether such displacement relates to current generation (e.g., older gas, coal, oil, or biomass) or potential new sources of generation that would otherwise be installed to serve need (e.g., coal). More generally, OPIC's portfolio mix by the 2018 and 2023 statutory deadlines will certainly reflect the gradual transition to a low-carbon economy, and a corresponding dramatic reduction in portfolio emissions relative to June 30, 2008 portfolio levels. In other words, OPIC's support for new, state-of-the-art gas-fired projects will, over time, replace the higher emitting fuel mix within its portfolio.</p> <p>If a new thermal project will result in a net reduction of 500,000 tons of CO<sub>2</sub>eq annually, such an emission reduction should be credited to that project (and OPIC's portfolio emissions). OPIC's approach, however, would artificially inflate overall greenhouse gas emissions from new projects and within its portfolio to the extent that no credit would be taken for the</p>	<p>Noted. OPIC has made a commitment to promote low and no-carbon fuels and technology. We recognize that certain country's National Appropriate Mitigation Actions (NAMAs) may include replacement of old power plants with newer, cleaner gas-fired power plants. The OPIC policy does allow for support of the construction of gas-fired power plants, consistent with a country's NAMA, provided those emissions are fully accounted for and the project has been allocated annual transactional cap.</p>
191	8	8.5	<p>ContourGlobal concurs with OPIC's view regarding the vital role that clean energy technology plays as a transition strategy to promote responsible and sustainable energy development in emerging countries. Assigning clean energy technology projects a greenhouse gas emission level of zero sends precisely the right market signal by encouraging U.S. businesses to bring innovative and clean development projects to less developed areas. OPIC's proposal is overly limited, however, in that it appears to limit application of the policy to only those clean energy technologies that will reduce greenhouse gas emissions "compared to a similar technology already in widespread commercial use in a host country." OPIC's proposal could effectively eliminate deployment of clean energy technologies and thus render meaningless the proposed preferential treatment of such technologies under the policy. As a broad policy matter, OPIC's mission is to support development in less developed areas where, by definition, critical infrastructure may be missing altogether, let alone not "already in widespread commercial use." Consider, for instance, a prospective borrower who seeks OPIC support for a clean energy technology (such as CHP) in a sub-Saharan nation where virtually no comparable technology exists. Under OPIC's proposal, the borrower's technology may be not be</p>	<p>Addressed. See response to Comment 189.</p>

192	8	8.5	<p>Moreover, as with all new thermal power projects it supports, if a clean thermal energy technology project (e.g., CHP) leads to a net cumulative reduction in greenhouse gas emissions, OPIC should credit that reduction against the total greenhouse gas emissions of projects in its active portfolio. As discussed above, OPIC's support of new thermal projects (like ContourGlobal's CHP and Togo projects) will result in a reduction of greenhouse gas emissions on a relative basis because they will displace emissions from less efficient units or replace higher emitting units that may otherwise be developed. As OPIC has estimated, ContourGlobal's proposed development of CHP projects<sup>8</sup> at various Coca-Cola Hellenic Bottling Company locations will result in a relative (and cumulative) reduction of approximately 200,000 tons of greenhouse gases per year. Those emission reductions should be credited against OPIC's overall portfolio greenhouse gas emissions.</p> <p>For the foregoing reasons, ContourGlobal respectfully submits that OPIC's Policy Statement should clarify that "clean energy technologies" are not limited to those sited where there are already comparable technologies in widespread commercial use.</p>	Addressed. See response to comment 189.
193	8	8.5	<p>The draft Policy Statement's definition of "renewable energy" includes "various forms of biomass." ContourGlobal seeks clarification from OPIC as to exactly what forms of biomass generation facilities would qualify as renewable energy projects. The final Policy Statement should make this point clear to provide the necessary assurance for developers of power generation facilities that wish to take advantage of the Policy Statement's favorable treatment of renewable energy and clean energy technology projects fueled by biomass.</p>	<p>OPIC has revised the policy statement to clarify that "renewable energy" included energy sourced from the combustion of "renewable biomass". OPIC also added a definition of "renewable biomass" which is consistent with the definition found in USEPA's Renewable Fuels Standard.</p>

194	8	8.5	<p>8.5. Further, paragraph 8.5 provides that projects involving “renewable energy or ‘clean energy technology’ are assigned a greenhouse gas emission level of zero for the purposes of this policy.” The definition of “clean energy technology” creates a potential loophole that would allow OPIC to assign fossil fuel projects that are more efficient than the norm in a host country a value of zero emissions, thus allowing OPIC to support projects with significantly greater GHG emissions than the agreed targets in paragraph 8.1. We urge that paragraph 8.5 be re-written to clarify that emissions from all projects otherwise meeting OPIC’s climate change policy thresholds still be counted towards the total portfolio emissions cap and reduction schedules. In general, OPIC should also commit to phase-out its funding of fossil fuel projects, which is consistent with the commitment made by President Obama and other world leaders at the 2009 G-20 meeting held in Pittsburgh.</p>	Addressed. See response to comment 166.
195	8	8.5	<p>Section 8.5 prevents OPIC clients from claiming that a project has “negative” emissions. It appears that OPIC has created a potential loophole that would allow OPIC to assign zero level emissions to coal and other projects. We urge that this entire paragraph be rewritten to clarify that it is not OPIC’s intention to assign projects negative emissions</p>	Addressed. See response to comment 166.
196	8	8.6	<p>OPIC Should Calculate Greenhouse Gas Emissions In Its Portfolio According To The Pro Rata Level Of OPIC’s Financial Commitment To The Project.</p> <p>Under OPIC’s proposal, no matter how low the level of OPIC’s financial commitment to a particular project may be in comparison to the total costs of the project, the draft Policy Statement would require OPIC to assume 100% of the direct emissions associated with that project. Adhering to such an “in for a dime, in for a dollar” policy artificially inflates the level of greenhouse gas emissions associated with OPIC’s commitments and diverges from internationally accepted accounting methods under the Greenhouse Gas Protocol. Thus, for the reasons described below, OPIC should refine its calculation of the greenhouse gas emissions of the projects within its portfolio to account for the pro rata level of its financial commitment to a particular project – possibly even as a percentage of total project capitalization.</p>	Addressed. See response to comment 174.

197	8	8.9	Incentives for energy efficiency and renewables: The Draft Policy encourages clients to pursue renewable and energy efficiency technologies. OPIC is developing financial incentives for small and medium sized enterprises to integrate these approaches into its projects. This, and more creative engagement and partnerships with other agencies and partners should be encouraged.	Noted
198	8	8.9	The Draft Policy provides incentives to pursue renewable and energy efficiency technologies. The financial incentives for small and medium sized enterprises to integrate these approaches into its projects should be extended to other agencies and partners. OPIC should be encouraged to engage in more creative partnerships.	Noted
199	8	8.10	Incentives for energy efficiency and renewables: The Draft Policy encourages clients to pursue renewable and energy efficiency technologies. OPIC is developing financial incentives for small and medium sized enterprises to integrate these approaches into its projects. This, and more creative engagement and partnerships with other agencies and partners should be encouraged.	Noted
200	8	8.11	The Draft Policy provides incentives to pursue renewable and energy efficiency technologies. The financial incentives for small and medium sized enterprises to integrate these approaches into its projects should be extended to other agencies and partners. OPIC should be encouraged to engage in more creative partnerships.	Noted
201	Appendix B		Appendix B: Categorical Prohibitions We would add the following to the list of Categorical Prohibitions in Appendix B: Projects that cause the involuntary resettlement of any indigenous peoples from their traditional lands or that take place or adversely affect their traditional lands, without their free, prior informed consent.	Based on guidance received from the State Department, OPIC is not in a position to accept this suggestion at this time.
202	Appendix B		Appendix B: Categorical Prohibitions We would add the following to the list of Categorical Prohibitions in Appendix B: Projects that would adversely affect a wetlands of international importance as listed under the Ramsar Convention	RAMSAR sites that are protected area Categories I, II, III, and IV, as defined by the International Union for the Conservation of Nature, are already addressed under Categorical Prohibition VII.

203	Appendix B		Appendix B: Categorical Prohibitions We would add the following to the list of Categorical Prohibitions in Appendix B: Projects that would be inconsistent with Nationally Appropriate Mitigation Actions the country has agreed to under the Copenhagen Accord.	The NAMAs that have been submitted to the United Nations to date vary widely in detail and complexity, particularly in the case of Appendix 2 countries. Some OPIC-eligible countries have not yet submitted a NAMA. In some cases it is difficult to determine what (if anything) would be clearly prohibited under these plans. As the process matures OPIC will reconsider this suggestion.
204	Appendix B		Appendix B: Categorical Prohibitions We would add the following to the list of Categorical Prohibitions in Appendix B: Extractive Industry Projects that do not publicly disclose all royalty or other payments made to the host country government.	The issue of payment disclosure in projects involving extractive industries has been addressed in Paragraph 5.21 of the revised Policy Statement