

Modernizing DFC's Nuclear Energy Policy: Conclusion of 30-day Public Notice and Comment Period

July 23, 2020

I. Introduction

After consulting with its Board of Directors, the United States International Development Finance Corporation (“DFC”) initiated a voluntary 30-day notice and comment period on June 10, 2020 for proposed changes to the agency’s Environmental and Social Policy and Procedures (“ESPP”) that would enable DFC’s consideration of support of nuclear power projects and align the ESPP’s definition of renewable energy with the United States Energy Information Administration’s (“EIA”) definition. This 30-day notice and comment period provided the public the opportunity to comment on the proposed changes.

During the comment period, DFC received a significant number of comments from individuals, non-governmental organizations (“NGOs”), industry stakeholders, and bipartisan Members of Congress. The vast majority of the hundreds of comments received were overwhelmingly in support of the proposed changes. In total, DFC received nearly 100 submissions containing over 800 individual comments. 80% of the submissions and 98% of the comments were in support of the proposed policy change.

These comments were considered and ultimately informed DFC’s final decision to adopt the proposed changes to the ESPP to enable DFC to consider supporting nuclear power projects and align its definition of renewable energy with the U.S. EIA’s definition.

Effective immediately, the DFC ESPP enables the use of its full suite of finance products to support all civil nuclear projects that meet the United States’ highest safety, security, and nonproliferation standards and laws, and other requirements set forth in the BUILD Act, other applicable law, and DFC policies including its Credit Policy practices.

II. Background on Proposed Changes

In 2010, the Overseas Private Investment Corporation (“OPIC”), the predecessor to DFC, changed its Environmental and Social Policy Statement (“ESPS”) to prohibit OPIC participation in projects that included the “production of or trade in radioactive materials, including nuclear reactors and components thereof.” This policy change was enacted following language in the FY 2010 Consolidated Appropriations Act,¹ which instructed OPIC to develop and issue via public notice and comment a comprehensive and binding “set of environmental, transparency and internationally recognized worker rights and human rights guidelines” to be applied to all projects that were no less stringent than the World Bank’s policies.

¹ Pub. L. 111-117, div. F, title VII, §7079(b), December 16, 2009, 123 Stat. 3396, codified at 22 U.S.C. §2191b.

During this public comment period, OPIC did not receive any comments related to the proposed change and the prohibitions were adopted in the final October 2010 policy statement. This restriction, along with the entire OPIC ESPP transferred to DFC pursuant to Section 1466(a)² of the Better Utilization of Investments Leading to Development (BUILD) Act and is now referred to as the DFC ESPP.

Since 2010 when OPIC adopted the policy prohibition on nuclear related projects, a number of important changes have occurred that are relevant to the DFC proposed policy change. First and foremost, the BUILD Act modernized and expanded the United States development finance agency's mandate to advance both U.S. development assistance objectives and U.S. foreign policy interests to serve as a strong alternative to authoritarian finance. The BUILD Act also provided DFC with new authorities including equity financing, technical development assistance, and USAID's Development Credit Authority ("DCA") that bolstered the debt financing and political risk insurance products inherited from OPIC.

In addition to the modernization of the United States' development finance tools under DFC, the U.S. civil nuclear enterprise has experienced significant progress in the development of new and advanced nuclear technologies that are smaller, safer, and more flexible. These advancements are creating new opportunities for developing countries pursuing energy solutions that will meet growing energy demand, their economic development needs, and environment and social standards.

At the same time, countries like Russia and China have increased their focus and deployment of state financing tools for nuclear projects in an effort to dominate the growing market for civil nuclear technologies in emerging economies, as a tool to expanding their geopolitical influence, while not requiring the same high standards for nuclear security, safety and nonproliferation that the United States requires. These efforts have put the United States nuclear industry at a competitive disadvantage, and also put the U.S. position as the world's leader in nuclear technology, safety, and security at risk across the entire nuclear supply chain.

On July 12, 2019, President Donald J. Trump signed the "[Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group \("NFWG"\)](#)," creating the NFWG charged with developing governmental actions that can be taken to "address the concerns identified by the Secretary [of Commerce] regarding domestic uranium production and to ensure a comprehensive review of the entire domestic nuclear supply chain."³ The NFWG's efforts built upon over two years of extensive interagency work taken in support of the

² 22 U.S.C. § 9686(a).

³ See, White House. (July 12, 2019). *Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group*. <https://www.whitehouse.gov/presidential-actions/memorandum-effect-uranium-imports-national-security-establishment-united-states-nuclear-fuel-working-group/>

President’s Civil Nuclear Review, announced on June 29, 2017, that directed a complete review of United States nuclear energy policy in order to find new ways to revitalize this crucial energy resource.

The NFWG’s final report, released on April 23, 2020, concluded that “America has lost its competitive global position as the world leader in nuclear energy to state-owned enterprises, notably Russia and China, with other competitor nations also aggressively moving to surpass the United States.”⁴ The NFWG’s report put forth the “Strategy to Restore American Nuclear Energy Leadership” reinforcing that “it is in the U.S. national security interest to preserve and grow the assets and investments of the entire U.S. nuclear enterprise,” by “addressing domestic and international vulnerabilities, assuring defense needs for uranium, and leveling the playing field against state-owned enterprises.”

The NFWG report contained several recommendations aimed at restoring U.S. nuclear leadership, and specifically called upon DFC to “fix legacy policies that disallow support for nuclear projects,”⁵ and “[e]nsure U.S. financing institutions support the civil nuclear industry to compete against foreign state financing.”⁶ This was determined as critical for the U.S. nuclear enterprise to compete on a more level playing field with state-owned nuclear enterprises like those in Russia and China, and restore its position as the world leader in exporting best-in-class nuclear energy technology.

III. Summary of Comments

Following the release of the NFWG report, DFC initiated the voluntary 30-day public notice and comment period to change its ESPP and align its policies with the United States’ whole of government approach. During the 30-day comment period, DFC received a significant number of comments from individuals, non-governmental organizations (“NGOs”), industry stakeholders, and Members of Congress. The vast majority of the hundreds of comments received were overwhelmingly in support of the proposed changes. In total, DFC received nearly 100 submissions containing over 800 individual comments, of which 98% were in support.

The vast majority of the comments noted that removing this prohibition on nuclear projects would have a number of positive impacts across multiple United States Government priorities, including strengthening U.S. national security, enhancing DFC’s development impact in eligible countries, supporting efforts to reduce emissions, advancing U.S. nuclear safety, security, and non-proliferation standards, supporting U.S.

⁴ U.S. Nuclear Fuel Working Group. (2020). *Restoring America’s Competitive Nuclear Energy Advantage: A Strategy to Assure U.S. National Security*, p. 4.
<https://www.energy.gov/sites/prod/files/2020/04/f74/Restoring%20America%27s%20Competitive%20Nuclear%20Advantage-Blue%20version%5B1%5D.pdf>.

⁵ U.S. Nuclear Fuel Working Group, 2020, p. 27.

⁶ U.S. Nuclear Fuel Working Group, 2020, p. 24.

global nuclear leadership and innovation, yielding a return for U.S. taxpayers, and supporting U.S. jobs.

This extensive body of comments submitted on the proposed change primarily fall into the three categories that align with DFC's investment objectives: (1) driving global development, (2) advancing U.S. foreign policy, and (3) generating returns for American taxpayers. The following section summarizes the comments under each of these three areas of focus.

1. Driving Global Development

As America's development bank, DFC partners with the private sector to finance solutions to the most critical challenges facing the developing world today. Due to the high development impact that energy projects generally have, DFC has an active portfolio of over \$8 billion in energy related projects. Energy underpins economic growth, and the need for affordable, reliable, clean, and baseload energy sources and technologies is increasing, especially in developing countries. As a result, developing countries are increasingly pursuing nuclear energy programs as an affordable, reliable, clean, and secure energy source to drive development and raise standards of living.

The majority of comments highlighted the rapidly increasing need for affordable, reliable and clean energy that emerging economies require to realize economic development and growth. It was also noted that developing countries are increasingly looking to civil nuclear power projects as the most viable and cost competitive option to meet their industrial and residential needs, as well as other energy intensive processes like desalination and home heating in order to support their sustainable development objectives and transitions to cleaner energy systems. Proponents of this change also noted that the prohibition limited the energy options available to developing countries, even though nuclear energy is can be suitable for their needs.

Another predominant theme in the comments appropriately recognized that U.S. nuclear technologies can provide emission free, reliable, and secure power for those who choose to use it, while also advancing the United States' high nonproliferation safeguards. All forms and sources of energy have unique attributes for economic development and environmental concerns. A majority of comments noted the important role that nuclear energy can play in developing nations' economic growth and development, the role that scalable nuclear power plays in balancing intermittent energy technologies, and nuclear energy's distinctive ability to generate affordable, reliable, emission free, and secure energy. Those in support of the change also noted the benefits that nuclear power can have in tandem with renewables. Additionally, those in support noted that the land required for nuclear power was minimal in comparison to the same generation capacity of renewables.

Opponents to the DFC policy change asserted that nuclear power would not improve energy access for the nearly one billion people who lack access to energy. Some stated a preference for DFC to finance only renewables. While a small number of comments asserted that the attributes of renewable energy technologies outweighed those of nuclear energy, the important role baseload and nuclear power play in balancing intermittent renewables and enhancing grid reliability was not taken into account.

A few commenters suggested that waste management be taken into account when considering financing nuclear projects. DFC agrees with this suggestion, and, in development of internal Policies and Procedures for Nuclear Projects, DFC will look to EXIM and other international best practices for radioactive waste handling, storage, and disposal.

A small number of comments opposed to this change expressed concern it would divert DFC financing away from lower income countries. However, adopting this policy does *not* in any way change which countries DFC is permitted to operate in. DFC is only able to operate in eligible countries pursuant to the BUILD Act and other relevant statutes (see, [DFC Eligibility](#)). This assertion also discounts that due to recent technology developments dozens of low- and lower-income countries are looking to pursue civil nuclear programs in order to meet their energy, development, and environment/climate objectives. This is especially important for countries in Sub-Saharan Africa, Latin America, Asia, and central and eastern Europe.

Furthermore, pursuant to the BUILD Act, DFC will continue to prioritize support in Low Income and Lower-Middle Income countries (LICs and LMICs). DFC has publicly set a target that at least 60% of its work will be in LICs and LMICs. In fact, year to date, over 70% of our approved projects are in LICs and LMICs. This proposed change in no way alters that target and our focus on solving the world's most pressing development challenges. Consistent with many comments, including from bipartisan Members of Congress, DFC intends to prioritize support of advanced nuclear technologies in developing countries to ensure DFC continues to execute on its development mandate. Indeed, this is where China and Russia are working aggressively to expand their influence.

One comment in opposition asserted that this change would put DFC at odds with other development finance institutions. However, proponents of this change reasoned this would send an important signal to development finance community that the United States is leading in the development and deployment of clean energy. This change not only supports U.S. efforts to regain global nuclear leadership, but also U.S. leadership in clean energy deployment in the development finance community.

2. Advancing U.S. Foreign Policy

DFC's new mandate under the BUILD Act placed a renewed focus on not only supporting U.S. development objectives, but also an increased focus on advancing U.S. foreign policy

objectives. Modernizing DFC’s policies to allow support for nuclear power projects is aligned with DFC’s mandate and an important step in advancing U.S. objectives.

This was the predominant theme in the majority of the comments that recognized the essential role this proposed change will have in supporting U.S. foreign policy interests, including advancing U.S. nuclear leadership and competitiveness by helping to level the playing field for U.S. nuclear technology exports, supporting bilateral cooperation with partner and allies, as well as advancing the United States’ nuclear safety, security, and non-proliferation standards that many competitors do not similarly require.

A majority of the comments also noted the critical importance of modernizing the DFC policy for the United States to better compete with state-owned nuclear enterprises like those in Russia and China. Many of the comments noted Russia and China’s aggressive approach to seizing the emerging market for advanced nuclear power projects, generally deploying state directed investment and concessionary financing, to expand their global influence while at the same time not requiring the high nuclear safety, security, and nonproliferation standards the United States requires as predicate for the export of U.S. nuclear technology that DFC would be able to finance.

These comments noted that modernizing DFC policy is critical to restoring the global leadership position that America has ceded “to countries with state-owned-enterprises, including Russia and China, and additional nations from the developing world are accelerating to fill the void.”⁷ The majority of the comments, as well as the NFWG report, maintained that in order to put the United States on a path to restoring our position as the world leader in exporting best-in-class nuclear energy technology, it is essential that DFC be able to participate in the financing of civil nuclear projects and provide an alternative to state-directed investment and advance U.S. foreign policy and development objectives.

The NFWG report also concluded that “[n]owhere are the predatory tactics of State-owned enterprises more evident than in the realm of export financing” than for nuclear projects.⁸ The resulting effect has put the U.S. civil nuclear enterprise at a competitive disadvantage when competing against strategic competitors that provide state-backed, state-directed concessionary financing, often times ignoring international safety and nonproliferation standards.

The comments acknowledged this conclusion, noting that competitive financing is generally the key differentiator when competing against state-owned enterprises for civil nuclear power projects, and the importance of enabling DFC to be able to consider financing nuclear projects alongside the U.S. Export-Import Bank (“EXIM”) in order to support U.S. efforts to regain U.S. global leadership and competitiveness. DFC’s ability to finance civil nuclear projects in coordination and alongside EXIM will demonstrate that these projects have the support of the U.S. government, without adopting the non-market

⁷ U.S. Nuclear Fuel Working Group, 2020, p. 6.

⁸ U.S. Nuclear Fuel Working Group, 2020, p. 26.

approach employed by our strategic competitors. It was also noted that this change will provide confidence to U.S. industry and private investors that they can compete globally.

Adopting this policy change furthers DFC’s mandate under the BUILD Act “to provide countries a robust alternative to state-directed investment by authoritarian governments and United States’ strategic competitors using practices with respect to transparency and environmental and social safeguards.”⁹ This change also serves to mitigate the financing challenges and competitive disadvantage that U.S. companies face when competing against the state-backed financing packages that Russian and Chinese state-owned entities offer to advance geopolitical influence.

Advancing United States’ high nuclear safety, security and nonproliferation standards is an important U.S. foreign policy priority. The majority of comments noted that adopting this change will work to further ensure that the highest nuclear security, safety, and non-proliferation standards are adopted by countries pursuing civil nuclear technologies. Only a few claimed that this change would not conform with U.S. non-proliferation objectives. However, this overlooks the U.S. government’s stringent requirements that is a prerequisite for the export of any U.S. nuclear technology as well as any U.S. financing for nuclear power projects. Consistent with many comments, DFC will adhere to these stringent requirements and ensure any project it support meets the highest safety, security, and non-proliferation standards.

The predominant view is that U.S. global nuclear leadership serves as an important foreign policy tool ensuring the peaceful use of nuclear power around the world. Deployment of U.S. nuclear energy technologies has ensured that the U.S.’ high standards of non-proliferation, security, and safety are maintained globally. U.S.-based civilian nuclear technologies come with the highest level of safety, security and non-proliferation standards that our competitors do not often have or require. Enabling DFC to support nuclear power projects and the export of U.S. technologies for peaceful use will ensure that our high standards are adopted in emerging economies. Using all tools available in the U.S. Government toolbox, like DFC, is necessary to maintain competitiveness and ensure our safety, security, and nonproliferation standards are adopted and maintained globally, or otherwise risk ceding U.S. leadership to countries like Russia and China, who do not require the same stringent requirements of the United States.

3. Generating Returns for U.S. Taxpayers

The comments also discussed the commercial viability and financial returns on nuclear projects that DFC may consider supporting. Proponents of the change noted that commercial civil nuclear relationship can last nearly a century and include high-value exports that support U.S. jobs, as well as generate revenues that also go into the advanced research and development required to ensure the United States remains a leader in

⁹ 22 U.S.C. § 9611(6).

development and deployment of advanced nuclear technologies that are smaller, safer, and scalable to meet the future market demand.

In the years since OPIC's 2010 prohibition, U.S. nuclear technology has evolved, as noted previously. Advanced nuclear technologies under development and deployment in the United States, including small modular reactors (SMRs) and microreactors, will have significantly lower costs than large nuclear power plants, and will be well suited for wider types of grids of developing countries. The export of U.S. technologies and equipment support U.S. jobs, research and development, and overall economic security. This not only support returns for taxpayers, but also provide energy systems that are capable of meeting energy needs beyond electricity including for water desalination, industrial uses, and municipal heating.

The few opposing the changes contend that financing nuclear projects would somehow lead to subsidizing unproven technologies. DFC subjects all projects it considers supporting to its extensive underwriting policies and comprehensive due diligence process that aim to ensure DFC supports transactions that are financially viable. In order for DFC to finance any nuclear power transaction, it will have to meet these stringent requirements just like any other project DFC considers supporting. DFC's policy change is an important signal to the modernizing U.S. nuclear industry that long-term financing will be an option as technologies evolve and are deployed.

IV. Implementation of DFC's New Policy

Now that DFC is able to consider supporting nuclear projects, DFC will take a thoughtful, rigorous, and sound approach to implementing the new policy. This will include the careful consideration of best practices within USG related to nuclear projects, including EXIM's Nuclear Financing Policy, Guidelines, and Standards, as well as international best practices related to the financing of nuclear projects.

V. Conclusion

Modernizing DFC policy to allow the consideration for financing nuclear related projects enhances DFC's ability to partner with the private sector on investments that drive global development, advance U.S. foreign policy, and generate returns for American taxpayers. This change also supports U.S. efforts to maintain global nuclear leadership by offering a strong alternative to authoritarian financing and servers to level the playing field against state-owned enterprises who do not require the same high nuclear safety, security, and nonproliferation standards. Additionally, this change will enable DFC to support U.S. nuclear technology leadership, including new and advanced reactors that can be smaller, safer, and scalable to meet the needs of developing countries as they pursue access to affordable, reliable, and emission free energy to meet growing demand and environmental objectives.

Effective immediately, the DFC ESPP enables the use of its full suite of finance products to support all civil nuclear projects that meet the United States' highest safety, security, and nonproliferation standards and laws, and other requirements set forth in the BUILD Act, other applicable law, and DFC policies including its Credit Policy practices.