



Institute for  
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

May 26, 2020

Subject: Redline on Scope/Standing

As requested by panelists during clarifying comments, the Institute for Policy Integrity now submits these suggested redline edits to Section 5.1.1, starting on page 5-1 of the draft *Guidelines*:

One of the first scoping questions an analyst must answer when conducting BCA is: who has economic “standing,” or put another way, whose gains and losses should be counted in the analysis? The most inclusive answer is all persons who may be affected by the policy regardless of where (or when) they live. For domestic policy making, standing may be limited to the national level ~~if that perspective is sufficient to maximize the welfare of U.S. residents and account for all legally required considerations;~~<sup>1</sup> however, if the welfare of U.S. residents is significantly connected to international effects, or if required by a specific regulatory context or statutory mandate, a more global perspective may be necessary.<sup>2</sup> Consistent with this interpretation, OMB guidance states that analysts should “focus on the benefits and costs that accrue to citizens and residents of the United States,” while also allowing that “[d]ifferent regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues” (OMB 2003). Note that the benefits and costs that accrue to U.S. citizens and residents may stem directly or indirectly from effects that occur beyond U.S. borders.

Limiting standing to citizens and residents of the United States can be complicated to operationalize in practical terms (e.g., how should multi-national firms with plants in the United States but shareholders, employees, and customers elsewhere be treated?). Analysts should ensure that its application is supported by the available data and that standing is consistently applied when estimating costs and benefits; in other words, if a group has standing for

<sup>1</sup> Regulations typically only apply to a nation’s own residents who have consented to adhere to the same set of rules and value for collective decision making. In addition, many domestic policies may be expected to have relatively negligible effects on other countries (Gayer and Viscusi, 2016; Kopp et al. 1997, Whittington et al. 1986), though climate change and the emission of certain persistent environmental toxics like mercury provide notable exceptions.

<sup>2</sup> See Revesz et al. (2017); Howard & Schwartz (2017). [Add to References: Revesz, Richard L. et al., 2017. The Social Cost of Carbon: A Global Imperative. *Review of Environmental Economics and Policy*, 11(1): 172-73. Howard, Peter & Jason A. Schwartz. 2017. Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon. *Columbia Journal of Environmental Law*. 42(S): 203-294.]

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estimating costs, a consistent and comparable approach to standing must apply to the benefit estimation as well.<sup>3</sup>

Ultimately, who has economic standing is a policy decision and is informed by legal requirements. However, because it has important implications for the scope of the analysis it should be determined early in the process. When evaluating benefits and costs beyond those that accrue to U.S. citizens and residents, OMB recommends that those effects are reported separately.<sup>4</sup> Any such separate reporting must be consistently applied to both costs and benefits and should be careful not to obscure or omit significant effects that, in fact, do accrue to U.S. citizens and residents.

Sincerely,

Jason A. Schwartz, Legal Director  
Institute for Policy Integrity

**Commented [JAS1]:** This redline addresses some ambiguity in the draft language. If a specific “group” of foreign shareholders is implicitly given standing for estimating costs/cost savings, it is not just that the same specific “group” (i.e., “they”) should “also have” standing for benefits; rather, it is that the scope of the benefits estimates must be proportionally expanded to cover effects at a comparable level of standing.

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**Commented [JAS2]:** Circular A-4 uses “beyond the borders” interchangeably with benefits and costs beyond those that “accrue to citizens and residents”—but those terms are in fact not equivalent from the perspective of standing. Perhaps most obviously, climate impacts affecting the 9 million U.S. citizens living abroad may be effects “beyond the borders,” but are also “benefits and costs that accrue to citizens.”

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<sup>3</sup> Consistency also requires analysts to consider whether certain transfer effects should be considered as a cost or a benefit when viewed within the particular framework adopted for standing.

<sup>4</sup> For discussion of when the effects of US policy on non-residents might be relevant in domestic BCA, see Viscusi, et al. (1988); Cropper, et al. (1994); Gayer and Viscusi (2016); Revesz (2017); and Howard & Schwartz (2017).

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