

March 28, 2008

Leonardo Cardenas
Government Stakeholder Group Lead
ISO WG on Social Responsibility

Dear Leonardo,

As the U.S. Government member of the government stakeholder group for the International Organization for Standardization (ISO) Working Group (WG) on Social Responsibility, I am hereby transmitting my response to you on the questions you sent via email on March 12, 2008. The response is due to you today, March 28, according to your instructions. I did receive the reply format and have included that as an attachment to this communication.

In preparing a response to the questions, I have conferred with several other key U.S. Government agencies so I will use "we" to mean our combined response. First, let us convey that the U.S. Government recognizes and appreciates the time and effort that you and many others have put into working on the ISO 26000 document. As a general matter, we consider that promoting social responsibility around the world contributes to the important goals of democracy, free trade, international development and human rights.

The U.S. Government has many programs that regulate and promote practices for protecting and improving environment, health and safety. The U.S. Government also plays a role in recognizing and promoting good labor and business practices. U.S. authorities are similarly committed to upholding and promoting international trade agreements to which the United States and the ISO 26000 WG member countries are parties. Insofar as the work of the ISO 26000 is consistent with and helpful in administering our own laws and the agreements we have with other countries, we welcome the output of the WG. We believe that our international partners are likely to have a similar view.

However, the U.S. Government has serious concerns on both the overall content of the WD 4 document and the ongoing process in the WG. Although we are submitting responses to the questions in the format you provided as well as in this letter, we note that these are our preliminary responses, as the time period to respond to the stakeholders' questionnaire was unduly short. Moreover, we have serious concerns about the underlying premise of the questionnaire, and our replies to it do not constitute our acceptance or approval of the document or process. We have provided some details below, but this should not be considered an exhaustive list, as additional input will follow this letter and response form. Because our concerns are serious, we believe it appropriate to inform other key players in this process and are sharing this letter and the questionnaire responses to the ISO Central Secretariat, ANSI, the ILO, and other government stakeholders.

The questionnaire provided on March 12 is an unfortunate example of how far off we believe the WG has moved from a consensus-building process. We find that the questionnaire as a whole attempts to circumvent dialogue and consensus by posing the resolution of underlying issues as structural “fixes” to make the document read better. The questionnaire implies a level of WG agreement on content that has never been established and for which there is frankly no consensus. This is especially true for sections 3, 5 and 7. The question for section 5, for example, asks each stakeholder to supply any disagreements they may have with the way the Drafting Team has formulated the section. This is precisely the kind of difficult dialogue that should be done in an open discussion allowing exchange over the heart of substantive issues, not through a questionnaire.

We find that the timing of responses to the questionnaire is likewise not conducive to consensus-building. A two-and-a-half week period to address a lengthy and detailed list of questions, many of which deal with systemic issues rather than stylistic ones, is unreasonable given the number of people needed to review, consider and provide internal views in order to inform an accurate and meaningful response. Unfortunately, the rush to publish this document appears to have overtaken the effort to ensure an open, transparent, and inclusive process.

We remain very concerned that stakeholders’ comments are not being given due consideration, as required by ISO/IEC Directives, Part 1. Presently, each stakeholder group leader will compile the responses from within their respective group and send them on to the Drafting Team. While it is not known how these responses will be handled, it is even more disconcerting that there is no process by which substantive issues raised in the responses can be discussed before release of a subsequent draft. There were over 7,000 responses to WD 3 and, as yet, there is no current account for how those responses were handled. Stakeholders do not specifically know whether or how their comments were addressed, or who made what decisions on them -- and on what basis.

Several of our illustrative concerns for the content of the guidance were expressed at the Vienna meeting and are given here in bulleted format. Again, this is not intended to be comprehensive, and we will follow up with a more detailed catalogue of our concerns. We have been in discussions with government colleagues from other countries and understand they may share similar concerns. Fundamentally, WD 4 goes far beyond the agreed terms of reference for this work program (NWIP 2004-10-07). We have serious concerns regarding the evolution of this exercise, including but not limited to the following observations:

- We recognize that ISO is set up to establish “standards,” but referring to this document as a “standard” is deeply problematic and should be avoided. The TMB has explicitly stated that such a document is not for conformity assessment (Res. 35/2004) and the current version states that it “is not intended or appropriate for certification purposes” (line 228). However, the document is written throughout in an overly prescriptive manner that will inevitably invite such inappropriate conformity assessments by certification or other bodies (e.g., stating that an organization is ISO

26000 “compliant”). We are likewise concerned that local jurisdictions may adopt all or part of this “ISO standard” into positive law -- an outcome clearly not intended but one that is foreseeable in light of the policy and legal content in the document. We strongly recommend that ISO look to an alternate form such as a Technical Report.

- We note the document is replete with innumerable misstatements and mischaracterizations of international law. At present, it delves into complex and controversial subject matter over which the drafters have inadequate expertise and no authority. The document presents novel or controversial interpretations of international law as settled matters. Statements of opinion or belief by the authors could incorrectly be taken as established fact. It would be deeply problematic, and unbefitting of ISO’s role and reputation, to use the content here as part of an international “standard” or guidance on human rights, the environment, or other subjects. We strongly urge ISO to reconsider the approach taken to this content.
- The current draft sets out to establish the so-called “Principles of Social Responsibility” and includes several principles on which there is no international consensus. Several such “principles” are at odds with both existing international treaties and standards and could have a significant commercial impact. References to so-called “principles” and “fundamental principles” require significant reframing. For example, the so-called “precautionary approach” and “polluter pays” concept do not rise to the status of principles of international law. The use of the term “principle” is an effort to elevate these and other concepts to a higher status in the context of international governance and circumvent ongoing discussions or decisions taken in other fora.
- Legal characterizations are particularly problematic with respect to the human rights content. In the absence of considerable re-thinking, it is not appropriate to transplant state responsibilities to non-state actors because states are the subject of international human rights law. Depending on the context and the rights in question, governments may have international legal obligations to abstain from particular conduct (e.g., to not take measures that impair freedom of expression) or take particular positive actions (e.g., to provide due process protections). Replacing “government” with “organization” may be entirely inappropriate, or even nonsensical, as the rights and obligations were not crafted with non-governmental entities in mind. The approach is fundamentally flawed.
- We note that international standards play an important role in the WTO Agreement on Technical Barriers to Trade (TBT Agreement). They are often the basis for technical regulations promulgated by countries. Technical regulations that are in accordance with relevant international standards are presumed not to create an unnecessary obstacle to trade. The fact that the draft standard is couched as voluntary guidance does not alleviate our concerns. If a government references a standard in its regulations and mandates compliance with it, it is binding. ISO 26000 could therefore be misused with a view to undermining the purpose, effect, and operation of

the TBT Agreement, with the result of creating -- rather than preventing -- unnecessary obstacles to trade.

In summary, we believe that both the WG and ISO need to take a serious look at the current content of the draft of ISO 26000 and the procedures that have been used to date. We would like to make clear, however, that this letter does not, and should not be construed as implying anything negative about the personal role that you and others have played in the Government stakeholder group. We appreciate the time commitment you have put into the work. The problems are well beyond the stakeholder level and that is why we will transmit these concerns to others.

Sincerely,
Mary

Mary C. McKiel, Ph.D.
U. S. Government delegate
ANSI member body

CC: Alan Bryden, ISO Secretary General
Dr. George Arnold, ISO VP Policy
Mr. Joe Bhatia, President, ANSI
Office of the United States Trade Representative
US Department of Commerce, International Trade
Administration
US Department of Commerce, National Institute of
Standards and Technology
US Department of State
US Department of Agriculture, Foreign Agricultural Service
US International Trade Commission
Environmental Protection Agency

Member (Name and NMB or LO) in every row please.	Questions	<i>Answers</i>
Mary McKiel ANSI Gov Stakeholder	Q1A: Considering the explanation and rationale for the restructuring (see IDTF N051), do you agree that the approach of addressing the social responsibility principles and practices before addressing the Clause 7 core subjects, enhances the readability, structure, clarity and logical flow of the document? If not, please identify any specific areas of concern with the intent behind this restructuring.	Unfortunately, the overarching problems with the content are beyond the 'fix' of restructuring.
Mary McKiel ANSI Gov Stakeholder	Q1B: The decision to address questions relating to 'what' an organization should do in Clauses 5 and 6 and to give guidance on 'how' to go about implementing this guidance in Clause 8 necessitates a close link between these clauses. Some IDTF members were concerned that this decision was not appropriately implemented. Please comment on:	Q1B attempts again to focus on structure when what is missing is dialogue to reach consensus. The question pre-supposes consensus on the content of the clauses regardless of their arrangement.
	i. Which concepts (if any) currently in Clauses 5 and 6 should move to Clause 8?	Should be openly discussed and not confined to questionnaire.
	ii. Which concepts (if any) currently in Clause 8 should move to Clauses 5 and 6?	(see above)

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	iii. The extent to which there are redundancies in or between Clauses 5, 6 and 8?	(See above)
Mary McKiel ANSI Gov Stakeholder	Q2a: Do you think that duplications between and within clauses have been sufficiently reduced and that a shorter document has improved its accessibility and quality? Please identify any specific instances of remaining duplication or other opportunities for further reducing the length.	The effort to reduce length is appreciated but the overall quality of the document suffers more from content.
Mary McKiel ANSI Gov Stakeholder	Q2b: Please identify specific instances (if any) where efforts to reduce length or to simplify the language may have impacted negatively on the quality of the document. Please provide advice on addressing any concern you have identified.	This is exactly the kind of issue that should be addressed in an open consensus process not as a part of a questionnaire. 'Advice' is not what members should offer ... hammering out exact language is at the core of consensus.
Mary McKiel ANSI Gov Stakeholder	Q3A: Do you believe that the nature of the guidance provided throughout WD4.1 is consistent and that it is applicable to all organizations (or where it is not applicable, that it is nevertheless appropriate and that a sufficiently clear qualifier has been provided)? If not, please provide some specific examples of inconsistent or inappropriate guidance, and some specific suggestions for ensuring consistency.	As there are many problematic areas of inconsistent and inappropriate advice in the document, a thorough response to this question would take a great deal longer to develop than allowed by time given to respond to the questionnaire.

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Mary McKiel ANSI Gov Stakeholder	Q3B: Do you think the guidance provided in the WD4.1 is applicable for your specific stakeholder category and all organizations in it, regardless of size and location? Please consider whether some guidance may be missing, or whether some guidance is not applicable or appropriate. Please provide specific suggestions with a rationale.	(same as above)
Mary McKiel ANSI Gov Stakeholder	Q4. Do you believe the language and tone of the document is appropriate for its intended audience? (Issues to consider include: is it written in plain English, has jargon been eliminated, does it use gender-neutral / gender-inclusive language, is it sufficiently encouraging, is it likely to inspire organizations to act on the guidance etc). If necessary, please identify any specific instances of inappropriate language and please provide alternative text. (Note: please do not focus on editorial issues). NOTE TO THE GSG MEMBERS PLEASE EXPRES IN THIS QUESTION ANY COMMENTS ABOUT THE WAY THE ROLE OF GOVERNMENT IS HANDLED IN THE DOCUMENT.	A more comprehensive response is included in the letter accompanying this document. It is a step in the right direction to recognize that ISO cannot and should not attempt to tell governments what to do. However, the issue of appropriate for intended audiences is remains very unclear and is, again, a large issue embedded in a simple question. The issue should be vetted not through the IDTF but through a consensus process.

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Mary McKiel ANSI Gov Stakeholder	<p>Q5(A): On Issue 1: After considering the explanation and rationale for the approach to initiatives that was adopted for this round of drafting (see IDTF N051), and the accompanying first draft of the Annex, are you willing to accept this proposed way forward as the longer-term compromise solution? This solution is intended to provide practical guidance to users of the standard, while at the same time addressing concerns regarding endorsement of initiatives. If you do not believe this to be a reasonable compromise, please provide an alternative more compelling compromise solution that you believe suitably provides for the various issues raised in IDTF N021.</p>	<p>It would be hard to find a more compelling reason to have further, open dialogue and consensus building discussions than the way this question is posed. It is not possible to accept unclear compromises or endorsement of initiatives.</p>
Mary McKiel ANSI Gov Stakeholder	<p>Q5(B): On Issue 1: Guidance to organizations on using initiatives is currently provided in Clause 8.7, but some questions remain on the nature and location of this guidance. To assist the IDTF:</p>	<p>This section may have the most to offer in relation to the accredited NWIP and is one of the shortest. Ideas on how to think through actual or potential social responsibility issues should be the bulk of any guidance document.</p>

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Mary McKiel ANSI Gov Stakeholder	i. Is the guidance provided in Clause 8.7 useful? If not, what kind of guidance on using initiatives do you think would add value to users of this International Standard?	Actual, not theoretical, case studies usually provide realistic and comprehensible guidance.
Mary McKiel ANSI Gov Stakeholder	ii. Where in the document should such guidance (if any), be included (options may include Clause 8.7, other sub-clauses in the standard, or in the Annex on initiatives)?	At the heart of it all.
Mary McKiel ANSI Gov Stakeholder	Q5(C): On Issue 2: Noting on one hand the concern about ISO endorsing initiatives, and on the other the standard practice of referencing relevant and appropriate sources, please comment on the preferred approach for citing initiatives as sources.	Annex -- without stated or implied endorsement. Here again, discussion should occur on what is even meant by relevant initiatives.

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Mary McKiel ANSI Gov Stakeholder	Q6A: Various help boxes that were included in WD3.2 have been removed. Are there certain help boxes from WD3.2 that have been deleted that you believe should be reinserted? Are there any existing help boxes in WD4.1 that you believe don't add sufficient value? (If so please identify them and comment). Are there areas in WD4.1 where additional help boxes would add particular value?	No comment.
Mary McKiel ANSI Gov Stakeholder	Q6B: Do you believe that there are instances where the document would benefit from the use of visual aids? If so, please indicate where, and please provide some specific suggestions / examples of such visual aids.	Can't answer this until the overall content and consensus issues have been resolved. This question implies a level of agreement that does not yet exist.
Mary McKiel ANSI Gov Stakeholder	Q7: Do you find the changes made to the WD3.2 definitions to be an acceptable compromise way forward? If not, please specify any changes to these revised definitions, and provide an explanation. Please specify if you think that there are additional terms that need to be defined, and if so please provide proposed wording.	No way at this point to know if the changes are an acceptable compromise to anything. It will take coordination with other government entities and that requires more time than we have been allowed.

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Mary McKiel ANSI Gov Stakeholder	Q8: After considering the explanation and rationale for the nature of the principles in Clause 5 (see IDTF N051):	
Mary McKiel ANSI Gov Stakeholder	i. Do you agree with the approach adopted in the current draft regarding which principles to retain in Clause 5? Please identify if there are some principles that should be moved or some that should be included.	The extent of the problems throughout the exposition on principles would require significantly more time to document.
Mary McKiel ANSI Gov Stakeholder	ii. Do you agree with the wording of the current principles? If not, please outline your specific concerns and your proposed solution to these concerns, noting the rationale provided for these changes.	Same as above
Mary McKiel ANSI Gov Stakeholder	Q9: After considering the explanation and rationale for the “general practices” included in Clause 6 (see IDTF N051):	

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Mary McKiel ANSI Gov Stakeholder	iii. Do you agree with the structure of this new clause or would you delete or add a sub-clause? Please outline your specific concerns and your proposed solution to each concern, noting the rationale for these changes.	The extent of the problems throughout the exposition on general practices] would require significantly more time to document.
Mary McKiel ANSI Gov Stakeholder	iv. Do you agree with the content of this new clause. If not, please outline your specific concerns and your proposed solution to each concern, noting the rationale for these changes.	Same as above
Mary McKiel ANSI Gov Stakeholder	Q10: The Overview section is intended to provide readers with a short introduction to the core subject so they can quickly understand what the issue is about, how it relates to social responsibility, whether it is relevant to their organizations, and what benefits their organization would be likely to obtain from acting on that core subject, before they examine the specific issues related to that core subject.	

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Mary McKiel ANSI Gov Stakeholder	i. Do you think the Overview sections in Clause 7 provide an organization with a sufficient introduction to achieve this understanding?	No;
Mary McKiel ANSI Gov Stakeholder	ii. If not, what additional specific types of information need to be added to the Overview?	It should be completely re-thought, not just re-written and this requires a consensus process not a questionnaire.
Mary McKiel ANSI Gov Stakeholder	Q11: In light of the considerations outlined above, further discussion is needed to identify the nature and content of the guidance on organisational governance (if any) that should be addressed in Clause 7. Recognising on the one hand the desire to minimise duplication, and on the other hand the strong preference of some that organizational governance should be maintained as a core subject in Clause 7:	
Mary McKiel ANSI Gov Stakeholder	i. Please identify the nature and content of the guidance (if any) on organizational governance that should be provided in Clause 7.2, noting the guidance currently provided in Clause 5.	This question should be the subject of open, consensus dialogue. It is inappropriate to attempt to address it through a questionnaire.

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Mary McKiel ANSI Gov Stakeholder	ii. Please share your views on the preferred approach for improving the linkages between the possible organizational governance elements in Clauses 5, 6, 7 and 8.	See above and attached letter.
Mary McKiel ANSI Gov Stakeholder	Q12A: The section should cover or at least address some of the most important issues facing an organisation with regards to human rights. Even if the section does not intend to be exhaustive, it is important that the major issues facing an organisation with regards to human rights, are addressed. Do you believe that there is any major / large area that the chapter currently does not cover or is missing? If yes, please provide an explanation to how it is relevant to an organisation and what possible guidance should be given.	See above and attached letter

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Mary McKiel ANSI Gov Stakeholder	Q12B: With regards to above outlined problem, and without being exhaustive in any manner, drafters recognize that in particular the 6.2.6. sub-clause on economic, social and cultural rights needs specific attention. Drafters recognize that this section is not about charity, but that the approach taken should be from a rights-oriented perspective and from an organization's point of view. Please provide examples / guidance where organizations can make a specifically important contribution in this area?	Appropriate for open, consensus dialogue not a questionnaire response. See attached letter
Mary McKiel ANSI Gov Stakeholder	Q13: What title would best convey the content of this clause and eliminate the confusion raised by use of the word "issues"? (It may help to consider the wording used by government departments in your country that deal with the issues covered).	No comment
Mary McKiel ANSI Gov Stakeholder	Q14: Do you think these are the appropriate principles relevant to consumer issues? If not, what specific principles would you add or delete? If appropriate, please provide specific text and a rationale.	Appropriate for open, consensus dialogue not a questionnaire response. See attached letter

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Mary McKiel ANSI Gov Stakeholder	Q15A: Whereas the old structure of Clause 7.8 explained the concept with three broader issues, the new structure reorganizes the text into eight more specific issues:	
Mary McKiel ANSI Gov Stakeholder	i. Please comment on the extent to which the new structure and revised content of Clause 7.8 is appropriate, adds clarity, improves readability, and more closely parallels the structure of the other clauses in section 7.	The attempt to focus on structure detracts from the real issues of this clause and all of clause 7, i.e., it is packed full of language and opinions, statements and implications that, at best, have not been discussed in an open consensus process and at worst are couched in language that may undermine existing work in national governmental and intergovernmental fora.
Mary McKiel ANSI Gov Stakeholder	ii. Please comment on whether the revised title of Clause 7.8 and its sub-headings (e.g. issues 1-8) usefully reflect the contents of the clause. If you have any concerns with the title and/or sub-headings, please suggest an alternative.	No comment

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Mary McKiel ANSI Gov Stakeholder	iii. Do you think that Clause 7.8 should also include a box explaining the main points of the Millennium Declaration and the Millennium Development Goals?	No comment
Mary McKiel ANSI Gov Stakeholder	<p>Q15B: One of the more significant changes to Clause 7.8 was the attempt to remove overlaps between “community involvement” and the concept of “stakeholder engagement” which is addressed elsewhere in the standard. Every attempt was made to preserve the core essence of “community involvement”, while eliminating unnecessary overlaps with “stakeholder engagement”:</p> <p>i. Do you think that the revised Clause 7.8 has struck an adequate balance between presenting the issue of “community involvement” and avoiding an overlap with discussions of “stakeholder engagement”? If you have any concerns please outline these and suggest a possible way for addressing them.</p>	No comment.

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Mary McKiel ANSI Gov Stakeholder	<p>Q15C: Another significant change to Clause 7.8, was replacing the term “social investment” with the term “capacity building”. The drafters had difficulty coming up with a meaningful definition for the term “social investment”, recognized that this term might create confusion with the term “responsible investment”, and wondered whether “social investment” might be jargon that could be usefully replaced with more accurate language.:</p> <p style="padding-left: 40px;">i. Do you think that the new heading “capacity development” and the use of this phrase in issue 8 accurately reflects the meaning and use of the previously used phrase “social investment”? If not, please suggest any alternative wording.</p>	<p>No way to know because there was not consensus on what ‘social investment’ really meant in the first place.</p>

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Mary McKiel ANSI Gov Stakeholder	<p>Q16A: The structure and level of detail in the new Clause 8 have changed significantly compared to Clause 8 in WD3.2:</p> <ul style="list-style-type: none"> i. Do you think that the structure of Clause 8 is appropriate and that it should parallel the structure of the guidance on practices in new Clause 6? ii. Do you think that by reducing the level of detail and removing duplications, Clause 8 has become more accessible without losing significant 'how to' guidance (see IDTF N051 for an explanation of this)? If you think that important 'how to' guidance is lacking, please identify the specific concepts or guidance that you think should be added? 	<p>Reducing unnecessary duplication is good. This question again focuses so much on structural detail that implications and meanings are lost. The issue in ii, that is, identifying important 'how to guidance' is exactly the grist that should be in the consensus mill and discussed robustly and openly, not via a questionnaire.</p>

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Mary McKiel ANSI Gov Stakeholder	Q16B: The IDTF was undecided whether to merge the new sub-clause 8.4 (Integrating social responsibility into the organization and its daily practices) and 8.6 (Examining activities about social responsibility). An explanation of some of the issues here is provided in IDTF N051. While some saw the concepts covered in these sub-sections to belong together, others argued that they should be addressed in two separate sub-sections. Do you think that these sections should be merged or left as separate sections?	Who knows until the larger issues are resolved?

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Mary McKiel ANSI Gov Stakeholder	Q16C: As part of the restructuring of Clause 7 (WD3.2), sub-clause 7.8 (Enhancing credibility) in WD3.2 was integrated in the new sub-clause 8.5 (Communicating on social responsibility). The reason for the integration was that some IDTF members did not consider the inclusion of the sub-clause on enhancing credibility in WD3.2 to be taken on the basis of consensus in Vienna. Furthermore, enhancing credibility was perceived to closely relate to communication and that the old sub-clause 7.8 put too much emphasis on assurance rather than other means by which to enhance credibility (see also explanation in IDTF N051). Others felt, however, that credibility is not only linked to communication and that useful guidance on assurance in sub-clause 7.8 in WD3.2 got lost. They favoured a separate sub-clause on enhancing credibility and to see this more guidance on assurance to be taken from former sub-clause 7.8.	
	i. Please comment on the right decision to incorporate the question of enhancing credibility in “8.5 Communication on social responsibility”.	No comment

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Mary McKiel ANSI Gov Stakeholder	ii. Please comment on whether the content of the new section (8.5.5) adequately addresses the concern to enhance credibility.	No comment
Mary McKiel ANSI Gov Stakeholder	<p>Q16D: The IDTF was undecided whether new Clause 8 should also provide generic guidance that is not specific to the context of social responsibility. While some believed that such generic guidance should be given, if applicable, others argued that general management guidance should not be offered. (Contested sections were, for example, “8.4.3 Establishing objectives and strategies for social responsibility” and “8.6.3 Examining performance”.) Do you think that general management guidance should be included in Clause 8, or do you think that this would go beyond the scope of this International Standard and make the guidance excessive?</p>	It should be removed. It appears to be an attempt to turn this into a management systems standard and that is something that the NSBs, as part of their deliberations in approving the WG, were assured it would NOT become.