

United States Comments on the Guidance Notes for the World Bank Environmental and Social Framework (ESF) -- “Draft for Public Comment” of November 1, 2017
December 2017

Introduction

The United States appreciates the World Bank’s efforts in preparing the draft Guidance Notes and making them available for public comment.

However, the U.S. is concerned that the draft Guidance Notes fall short of what we and many others expected, and that they risk undermining both the substantive policy commitments and requirements of the ESF and the Bank’s credibility and standing. Accordingly, revising these documents to be of much higher quality should be a priority.

The U.S. recommends that the World Bank revise the Guidance Notes to make a much more substantive, robust product that will help borrowers implement the ESF well, and put the revised Guidance Notes out for a second public comment period.

The U.S. strongly believes that:

- High quality Guidance Notes are important for the effective implementation of the ESF.
- High quality Guidance Notes will support the Bank’s global development leadership role, its role as a knowledge bank, and potential adoption of the ESF by other development finance institutions in co-financing situations and as their own policies. Poor quality Guidance Notes may result in the Bank, in effect, ceding its knowledge/leadership role.
- High quality Guidance Notes will be an important element of training and capacity building, especially since resources for training and capacity building are limited and are unlikely to reach everyone with a need to understand and apply the Environmental and Social Standards (ESSs).
- High quality Guidance Notes are *especially* important for World Bank staff, to provide an institutional reference point to support specialists in their discussions with borrowers. Since the ESSs allow for more staff judgment than the current safeguards, borrowers may push back against specific recommendations by a Bank specialist. Hence, it is important for any World Bank specialist to have clear guidance and/or examples that he/she can point to. They can also provide a base of information so that the specialist can focus on the specifics of a project, not just on basic concepts and approaches. Guidance Notes *support* and *assist* a specialist, making him/her more effective.

Overarching/cross-cutting recommendations on the Guidance Notes

- The Guidance Notes should clearly state that their purpose is: “To assist borrowers in the effective implementation of the ESS policy requirements.” That is, their purpose is to provide guidance on how to interpret and apply the technical content of the ESS principles and requirements. As such they should:

- Explain what is intended by the ESS and the technical considerations that should be brought to bear.
 - Assist the reader in making key judgements, implementing best practice and dealing with typical problem issues.
 - Provide practical “how-to” guidance that can be applied in an operational context, without attempting to cover every scenario or to be too detailed or prescriptive.
 - Foster willingness and ownership by addressing “why” a requirement is important and what is to be gained from its implementation.
 - Draw on and incorporate the work of others, including but not limited to other MDBs, the Inspection Panel (e.g., the “Emerging Lessons Series”) and the Independent Evaluation Group.
- The “how” should focus on what good implementation would look like. It should help borrowers understand what is expected of them under the ESF, and how to do it. The Guidance Notes should articulate a high standard of implementation. The purpose of the ESSs is to promote sustainable, inclusive development and that is best achieved by telling borrowers how to use and implement the ESSs effectively.
 - Where judgement is required, the Guidance Notes should not just repeat the standard but should “unpack” it. This could include discussion or listing of:
 - Key choices or decisions to be made;
 - Factors that might affect the choice or decision; and
 - Some examples of different scenarios. (If more than one example is provided, that can help demonstrate that there is room for judgement.)
- Revised Guidance Notes should be modeled after the IFC’s Guidance Notes in terms of scope and level of detail.
- The Guidance Notes should be written in an appropriate “voice” that supports the ESSs. In general, they should use “should” to express guidance, as other MDB guidance notes do. “Should” is appropriate for measures that are recommended, but not required.
 - For discussing or characterizing ESS requirements or Bank requirements under the Environmental and Social Policy (ESP), the Guidance Notes should use “will,” “shall” or “must,” i.e., words of obligation.
 - Phrases such as “it is important that,” “it is best practice that,” “the borrower may,” and “the borrower can” suggest something optional, and should not be used to characterize or paraphrase an ESS requirement or national or international obligations. They may be appropriate for options or possibilities.
 - Repeating the text of an ESS is unnecessary. Paraphrasing it in a weaker form is inappropriate and not acceptable.
 - Guidance Note text that undermines or misrepresents the ESS is also inappropriate and not acceptable.
- Some specific examples (“may” – “should”):

- GN10.1 should say, “The process to identify stakeholders should ~~may~~ include the following:..”
- GN11.2 should say, “Baseline data studies should ~~may~~ comprise a combination of...”
- Some specific examples of problematic text:
 - ESS1 GN 9.2 undermines the Bank’s role in a common approach (i.e. the shared safeguards when the World Bank is co-financing with other development finance institutions). Rather than an active World Bank using its requirements to shape a common approach (as expected in the ESS), the GN only envisages the Bank as reviewer of common approaches already agreed by the borrower and other lenders.
 - ESS1 GN11.4 narrows the definition of “associated facility” from that stated by the policy.
 - ESS6 GN 40 suggests, with no basis, that a borrower’s ability to control or regulate primary suppliers does not include regulation (except in exceptional cases).
 - ESS2. Paragraph 15 requires that borrowers “will provide appropriate measures of protection and assistance” for workers with vulnerabilities. GN 15.2 undermines this provision by focusing on minimizing the cost of any potential measures and excluding consideration of effectiveness. The overall effect of the paragraph as written is to suggest that a borrower do as little as possible for its vulnerable workers, rather than suggesting that the Bank supports inclusive development and is committed to helping the borrowers with this challenge.
- The ESF broadens and deepens the focus on social risks and impacts, and the Guidance Notes should support this change. This should include:
 - A focus on social impact assessment generally (e.g., much greater depth on how to do a social impact assessment, potentially with supplemental guidance and/or good practice documents being developed);
 - A focus on mainstreaming the identification, assessment and mitigation of impacts on disadvantaged and vulnerable groups throughout the Guidance Notes, not just in the notes related to ESS1 and ESS10.
 - Consideration of information on human rights risks and factors that affect civil society space. The Bank’s consideration of social impacts and stakeholder engagement plans should be *informed by* available information and analysis on human rights risks and dynamics affecting civil society space.

- Resources. The Guidance Notes should include references and links to other resources and tool-kits. There is no need to reinvent or redraft materials well-articulated by others, but the Guidance Notes should bring together existing resources. A good set of resources is, however, not a substitute for good Guidance Notes.
- Level of sophistication: the Guidance Notes can speak to a more sophisticated audience than the current draft. The readers will likely include experienced government officials as well as consultants and contractors who work with these issues on a regular basis. (If the Bank believes that it needs “entry level Guidance Notes” for some borrower staff, perhaps it could be creative in presenting key messages in the Guidance Notes, or having a “basics” section for each ESS. We recognize that different audiences are a challenge.)
- Although written for borrowers, these Guidance Notes will inevitably inform Bank staff’s due diligence and supervision of projects, and frame the working relationship between Bank and borrower staff. The GNs (or an introductory chapeau) should explain how these Guidance Notes will relate to or be used by any future due diligence guidelines or supervision guidance for Bank staff.