FIDUCIARY DUTY IN THE 21st CENTURY

OHIO ROADMAP
THE PROJECT

The Fiduciary duty in the 21st century Report concluded that failing to consider long-term investment value drivers, which include environmental, social, and governance (ESG) issues, in investment practice is a failure of fiduciary duty. Despite significant progress, many investors have yet to fully integrate ESG issues into their investment decision-making processes. We define ESG integration as the systematic and explicit inclusion of material ESG factors into investment analysis and investment decisions.

Following the publication of the initial report, the Principles for Responsible Investment (PRI), UNEP FI, and The Generation Foundation launched a three-year project in January 2016 to implement the report’s recommendations, including the preparation of country roadmaps. The roadmaps enable the PRI and UNEP FI to support national investors and stakeholders, as well as policymakers, in developing and implementing clear and accountable policy and practice that embraces the modern interpretation of fiduciary duty.

The US roadmap, published in October 2016, was developed through extensive consultations and sets out recommendations in seven categories: investor education, corporate reporting, investment consultants, legal advice, stewardship and engagement, organisational process and disclosure, and Employee Retirement Income Security Act (ERISA) plan governance.

The Ohio roadmap seeks to build upon the US roadmap by showcasing responsible investment efforts and best practices at the state level and by making additional recommendations. It draws on interviews with stakeholders in Ohio, including with investment managers and asset owners who already integrate ESG factors into their decision making, and some who are at the early stages of establishing an ESG practice or are still in the research phrase. We also spoke to representatives from both the public and private sectors to fully represent the state of play in Ohio.

Currently, the PRI has only two signatories that have their headquarters in Ohio, although several more have a presence in the state. This is compared with more than 90 signatories with their headquarters in New York, 65 in California, and 15 in Illinois. Despite the relatively small number of signatories in Ohio, we found that the momentum around ESG integration is growing in the state.

Information gleaned from conversations in Ohio, as well as research on state and federal policies on investments and governance issues, guided our analysis and recommendations.

The recommendations in this roadmap include that:

1. The Ohio State Treasurer and Treasurers of major metropolitan areas should publish responsible investment policies that include consideration of ESG factors.
2. Ohio public institutes of higher education, including the Ohio State University and Ohio University, should establish new, and support existing, ESG programs, including:
   a. Creating responsible investment policies for endowments.
   b. Establishing programs that embed ESG into investment education for the next generation of responsible investors.
3. Public pension funds, and corporate pension funds, should integrate ESG factors into their decision-making, including:
   a. Establishing policies that integrate ESG into all fund options.
   b. Signing the PRI, or making equivalent public commitments to responsible investment and stewardship principles (if have not already done so).
   c. Ensuring trustees have a proper understanding of what ESG is and what it is not.
4. Mayors should join Climate Mayors and local entities should join We Are Still In. These coalitions aim to hold climate warming to well below 2°C, to help transition to a clean energy economy, and protect investment portfolios from associated material risk.

PROJECT STEERING COMMITTEE

- Peter Knight, Retired Partner, Generation Investment Management
- Fiona Reynolds, Managing Director, PRI
- Nick Robins, Co-Director, UNEP Inquiry into a Sustainable Financial System
- Eric Usher, Head, UNEP Finance Initiative
WHAT IS RESPONSIBLE INVESTMENT?

The PRI defines responsible investment as an approach to investing that aims to incorporate ESG factors into investment decisions, to better manage risk and generate sustainable, long-term returns.

Why invest responsibly?
The global momentum around responsible investment is driven by:

- Recognition in the financial community that ESG factors play a material role in determining risk and return;
- Understanding that incorporating ESG factors is part of investors’ fiduciary duty to their clients and beneficiaries;
- Concern about the impact of short-termism on company performance, investment returns, and market behavior;
- Legal requirements protecting the long-term interests of beneficiaries and the wider financial system;
- Pressure from competitors seeking to differentiate themselves by offering responsible investment services as a competitive advantage;
- Beneficiaries becoming increasingly active and demanding transparency about where and how their money is being invested; and
- Value-destroying reputational risk from issues such as climate change, pollution, working conditions, employee diversity, corruption, and aggressive tax strategies in a world of globalization and social media.

We note that responsible investment is not the same as socially responsible investment or impact investing. While these approaches seek to combine financial return with moral or ethical considerations, responsible investment can and should be pursued even by the investor whose sole purpose is financial return, because it argues that to ignore ESG factors is to ignore risks and opportunities that have a material effect on the returns delivered to clients and beneficiaries. Responsible investment does not require ruling out investment in any sector or company, nor does it require the use of specialized products.
INTRODUCTION

Ohio is often viewed as a microcosm of the United States due to its diverse regions and bellwether political landscape. Like the rest of the country, responsible investment approaches are gaining traction in the state and prompting new conversations among investors, financial professionals, and students. While some in the state have been practicing some form of responsible investment for decades, many others are just starting their research on various ESG factors and different ESG integration techniques.

There is a long history of socially responsible investing in Ohio, particularly in the southern part of the state, rooted in Catholic beliefs. Several firms that today offer ESG options, or are in the process of creating a program, have an established faith-based clientele who have sought to align investments with values. The second largest hospital system in the state, Mercy Health, practices ESG integration and negative screening to ensure its investments align with its Catholic values1. For example, it engages with corporations on issues that particularly align with its mission, such as access to affordable healthcare, and will not invest in companies that provide services that are inconsistent with Catholic values.

Asset management firms that are newer to ESG issues may be starting their programs due to a perceived business opportunity or recognition of the materiality of ESG factors to investment performance. As with other firms in the US that have an international client base, Ohio organizations noted that European asset owners often pave the way for ESG integration. There has also been a recent uptick in ESG questions listed on requests for proposals from investment consultants.

Interviewed stakeholders also stated that they expect the next generation of investors to bring about change by increasing demand for ESG integration. Several studies demonstrate millennials’ strong interest in sustainable investing. For example, a study by Morgan Stanley Research2 found that millennials are twice as likely to have targeted investments than the total population, and Schroders3 found that millennials place far greater emphasis on ESG factors than investors above the age of 36.

A good illustration of this is found at Bloomberg, where millennial employees are the highest participants in its ESG fund newly added to its 401(k) plan4.

---

FIDUCIARY DUTY AND BARRIERS TO ESG INTEGRATION

Key challenges in the US when it comes to fiduciary duty are the different laws and regulations for various types of investments, and the fact that many are regulated at the state rather than the federal level. Fiduciary duties for private pension plan sponsors are clearly defined under the Employee Retirement Income Security Act (ERISA), which is primarily regulated by the Department of Labor (DOL). However, each state oversees its own laws for other investments, such as public pension funds and insurance products. Although public funds (except for those for US federal employees) are overseen by their respective states, they typically align with ERISA standards. In Ohio, investment powers and fiduciary duties of a board for state pension funds are laid out in the Ohio Revised Code. There are several other state laws relating to fiduciary duty, such as the Ohio Prudent Investor Act (OPIA), which governs fiduciaries of trusts. A recent article in the Probate Law Journal of Ohio, authored by the Glenmede Trust Company, examines the duty of loyalty principle and ESG integration under the law. It concludes that: “Impact investing can be consistent with the OPIA if the trustee uses an ESG integration process that is designed to be at least equal to traditional fiduciary investments from a return, fee, and diversification perspective.”

Private retirement plans often cite litigation risk as a reason for not incorporating ESG factors into their decision-making. This is despite guidance from DOL stating that, when ESG issues have a financial impact, they are “more than just tiebreakers, but rather are proper components of the fiduciary’s analysis of the economic and financial merits of competing investment choices.”

However, at the state level, stakeholders we interviewed expressed little concern that fiduciary duty could be an obstacle to responsible investing. There is a duty to ensure returns, but also to do what is in the best interest of clients. Several stakeholders cited the lack of a clear-cut approach to ESG integration, rather than fiduciary duty, as a barrier to its uptake. While different approaches can lead to flexibility and customization, the myriad options can also be perceived as overwhelming. Concerns were also expressed about the current ability to quantify ESG results, the reliance on imperfect information, and cost challenges associated with providing additional ESG services. To help address questions regarding the financial impact of responsible investment, the PRI has produced a paper focusing on ESG factors in the United States.

---


8 Financial performance of ESG integration in US investing, PRI: [https://www.unpri.org/download?ac=4218](https://www.unpri.org/download?ac=4218)
ESG materiality

A 2015 meta-study by Deutsche Asset & Wealth Management and the University of Hamburg analyzed 60 review studies and 2,250 unique primary studies and found that 62.6% of the studies revealed a positive correlation between ESG investing and financial performance. Further, a 2017 Boston Consulting Group analysis of more than 300 companies found that organizations with higher ESG performance have higher valuation multiples and margins.

In February 2018, the PRI released a paper summarizing three empirical studies on ESG materiality in the US. The first study used proprietary data from MSCI ESG Research analytics and evaluated the relative performance in active cumulative returns from portfolios with improving ESG scores versus those with high ESG scores against a broad index across geographic regions. The other empirical studies, by BofA Merrill Lynch Global Research and Calvert Research and Management, evaluated ESG materiality from equity and fixed income perspectives.

The three studies confirm that ESG factors are materially linked to the performance of both equities and fixed income investments. In so doing, they should provide US investors with confidence in the value of ESG integration and the potential for ESG integration to enable investors to identify and capitalize on investment opportunities in the US.

9 ESG & Corporate Financial Performance: Mapping the global landscape. Deutsche Asset & Wealth Management: https://institutional.dws.com/content/_media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_(2).pdf
RECOMMENDATIONS

1. TREASURER OFFICES
The Ohio State Treasurer and Treasurers of major metropolitan areas should publish responsible investment policies that include consideration of ESG factors.

The Office of the Ohio Treasurer oversees a portfolio of more than $21.5bn. While the state does not have a responsible investment policy, it is leading the way when it comes to transparency regarding its investments. In 2014, the Treasurer established OhioCheckbook.com to ensure the state and local entities are held accountable for over $621bn in expenditures. This led to Ohio jumping from 46th place to number one in US PIRG’s annual ranking of states’ disclosure regarding their spending. Disclosure is a start, but it is only one component of a holistic approach to responsible investment. We encourage the state to continue its transparency efforts. Also, the Ohio Treasurer should consider establishing a responsible investment policy which includes the disclosure of ESG factors.

Ohio Treasurer offices throughout the state, particularly in the three C’s – Cleveland, Columbus, and Cincinnati – can look to their neighbor in the Midwest, Illinois, for a model of how public funds can create responsible investment policies. In 2017, its state treasurer Michael Frerichs approved an ESG policy “designed to allow for sufficient flexibility in the execution of ESG investment responsibilities while setting forth specific ESG factors and industry-recognized best practices that are relevant to the Treasurer’s investment portfolio and the evolving marketplace.” The policy was updated in April 2018.

In Chicago, City Treasurer Kurt Summers championed an initiative to enable the city’s $7bn portfolio to adopt an ESG approach, commit to a carbon-neutral portfolio by 2020, and become a PRI signatory. The Treasurer noted that he sees the move as “enhancing our ability to fulfill our fiduciary responsibility.” As of May 2018, the proposal is pending before City Council. The PRI strongly supports these efforts.

16 http://www.chicagocitytreasurer.com/home/eng/
17 City Officials Want Chicago to be a Responsible Investor: https://www.wsj.com/articles/city-officials-want-chicago-to-become-a-responsible-investor-1519821000
18 https://www.unpri.org/Uploads/z/g/z/PRI_Treasurer-Summers-Letter_14-March.pdf
2. UNIVERSITIES

Ohio public institutes of higher education, including the Ohio State University and Ohio University, should establish new, and support existing, ESG programs, including:

Creating responsible investment policies for endowments.
Establishing programs that embed ESG into investment education for the next generation of responsible investors.

On college campuses across the US, students are leading fossil fuel divestment campaigns. The Undergraduate Student Government general assembly at the Ohio State University (OSU), one of the largest universities in the country, passed a resolution in 2017 in support of divesting from the top-200 fossil fuel companies.19 The student Senate at the Ohio University (OU) passed a similar resolution in 2017. We note, however, that ESG integration does not necessarily involve negative screening or the sacrifice of financial returns. It is rather a holistic approach that provides investors with an expanded tool-set.

Rather than focus on divestment or negative screening, OU has established an innovative, student-led initiative, with faculty advisors, on ESG integration. In 2011, the school created a comprehensive sustainability plan to ensure it becomes carbon neutral by 2075.20 One of the benchmarks in the plan was “to assess endowment investments in sustainable corporations and entities and recommend strategies for increasing investment in these corporations and entities.” As a result, the university’s board opted to create a pilot program led by students. The school allocated $4m for ESG investments as prescribed by the Sustainable Investing Advisory Committee (SAIC).

After the SAIC developed its initial guidelines that specified which ESG issues are relevant to the campus, the undergraduate business school investment groups – the Fixed Income Management Group and the Student Equity Management Group (OSEMG) – were each tasked with creating $2m ESG portfolios in addition to $2m for traditional ones. Both the equity and fixed income ESG portfolios outperformed the traditional investments over the first three years. However, it is hard to draw definitive conclusions given the relatively short time period and limited diversification due to the portfolio size.

At the start of the program, SAIC student faculty advisor Ana Rosado Feger said, “As far as we know, we are the first University to have both a fixed-income student investment group and an equity-based income student group managing ESG portfolios. It’s a change in philosophy when it comes to investing. What we’ve seen from the research is we may not see abnormal high returns, but we expect to demonstrate that the ESG model portfolio will get steadier returns over time. It really changes the mindset to a focus on the longer term.”

The university at large does not have a responsible investment policy, but that could be a natural next step. We recommend that universities create endowment policies that integrate ESG factors into investment decisions. Schools can look to public universities in the country – the University of California and the University of Maryland – that have committed to the PRI’s principles as models.

One barrier to additional schools implementing similar programs is the cost associated with ESG company scoring. Financial data providers such as MSCI, FTSE Russell and Bloomberg provide high-quality ESG data at scale, and while costs continue to come down, schools may have limited funding for such services. Further, the natural transition of students graduating, and schools getting new board members or presidents, can hinder long-term policy making.

Nonetheless, given the interest in and commitment to responsible investment by the next generation, other universities should consider establishing programs similar to the SAIC. Institutes of higher education in the state could form standards to create initiatives across Ohio’s 62 state schools. Fellowship programs aimed at college students are another tool to educate students on the value of long-term investing. Heartland Capital Strategies, a responsible investment organization founded by labor unions in Pittsburgh, recently launched the Labor Capital Fellowship program at Georgetown University, which is aimed at mobilizing the next generation of responsible investors.

21 https://www.ohio.edu/sustainability/upload/SAIC-Case-Study-2.pdf
3. PUBLIC PENSION FUNDS

Public pension funds, and corporate pension funds, should integrate ESG factors into their decision-making, including:

Establishing policies that integrate ESG into all fund options.
Signing the PRI, or making equivalent public commitments to responsible investment and stewardship principles (if have not already done so).
Ensuring trustees have a proper understanding of what ESG is and what it is not.

<table>
<thead>
<tr>
<th>FY 2016</th>
<th>Income</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pension Plan</td>
<td>Assets in M</td>
</tr>
<tr>
<td></td>
<td>Ohio Public Employees Retirement System (OPERS)</td>
<td>$78,730.30</td>
</tr>
<tr>
<td></td>
<td>Ohio Police &amp; Fire Pension Fund (OP&amp;F)</td>
<td>$14,584.00</td>
</tr>
<tr>
<td></td>
<td>Ohio State Teachers Retirement System (STRS)</td>
<td>$70,469.00</td>
</tr>
<tr>
<td></td>
<td>Ohio School Employees Retirement System (SERS)</td>
<td>$12,822.10</td>
</tr>
<tr>
<td></td>
<td>Ohio Highway Patrol Retirement System (SHPRS)</td>
<td>$824.00</td>
</tr>
</tbody>
</table>


Several governments around the world have established stewardship codes that govern the interactions between investors and investee companies, with a view to promoting long-term value creation strategies. In the US, investors representing more than $22trn in assets under management, recently formed the Investor Stewardship Group (ISG). In January 2018, the group launched a set of stewardship principles that require its members to evaluate the corporate governance activities of their investee companies and work alongside issuers to encourage adoption and implementation. Two Ohio public pension funds – the Ohio Public Employees Retirement System (OPERS) and the School Employees Retirement System of Ohio (SERS) – are signatories of the ISG. We encourage additional public pension funds in the state to commit to stewardship.

Financial CHOICE Act

The Financial CHOICE Act (H.R.10) was introduced by Financial Services Committee Chairman Jeb Hensarling and passed the House of Representatives in June 2017. The bill would mandate that shareholders seeking to submit proposals on a corporate ballot must own at least 1% of the company’s outstanding stock over a three-year period, compared to the current $2,000 threshold for one or more years.

The proposal seeks to eliminate the ability of all but a few investors to file resolutions and exercise their voting rights through the shareholder proposal process. Such a change would reduce corporate accountability to long-term investors. We strongly oppose these proposed changes. OPERS and SERS signed a letter to the US House leadership expressing concerns about the weakening of shareholder rights.
With $109bn in assets, OPERS is the 12th largest public retirement system and 15th largest retirement system in the country. In addition to its membership of the ISG, OPERS has its own Ohio Diversity initiative and individually engages companies that do not have females on the boards of Ohio companies. In early 2018, the Ohio House of Representatives introduced a resolution to encourage equitable and diverse gender representation on the boards and in senior management of Ohio companies and institutions.

The resolution cites a report from Catalyst, a non-profit promoting women at work, and states that it “found that three or more women serving on a corporate board substantially changes boardroom dynamics, enhances the likelihood that women’s voices and ideas are heard, and creates a critical mass of women that can lead to better financial performance.” The resolution goes on to say that “Ohio has a significant stake in promoting equitable and diverse gender representation in the public, private, and nonprofit leadership ranks of Ohio companies, institutions, and state and local government.” These efforts are a welcome step for promoting and encouraging board diversity. At the federal level, lawmakers have also encouraged the Securities and Exchange Commission to strengthen board diversity policies.

There are currently no legislatively mandated directives for state pension funds when it comes to responsible investment policy. However, following the introduction of legislation requiring the pension funds to divest of any company holdings with business ties or operations to Iran and Sudan, the funds agreed to develop stand-alone policies without a mandate. We welcome standalone policies and encourage voluntary action on ESG integration from stakeholders as an alternative to mandatory, prescriptive investment considerations and disclosures.

Plans’ trustees should understand what ESG is and what it is not. There are many resources available to assist with education, including external investment consultants, internal resources of the fund and the PRI Academy. The latter has developed courses that includes content from leading international experts, real life and hypothetical case studies, and financial modelling. The PRI can offer trustee training courses for a reduced cost on the condition that funds’ boards commit to completing the course.

We recommend that public funds integrate ESG into all fund options. In addition, Ohio public employees that have a member-directed investment option as part of their retirement plan could be provided with an opportunity to incorporate sustainability-labelled funds into their benefits. The retirement program for federal employees – the Thrift Savings Plan – does not currently have an ESG fund option. However, in the past, Congress has introduced legislation that would institute a “corporate responsibility index” as an option for beneficiaries. This change would offer plan participants a different investment choice that could help minimize risks associated with ESG factors and generate returns.
4. CLIMATE CHANGE COALITIONS

Mayors should join Climate Mayors and local entities should join We Are Still In. These coalitions aim to hold climate warming to well below 2°C, to help transition to a clean energy economy, and protect investment portfolios from associated material risk.

We Are Still In is a movement across the United States with 2,700 signatories, including businesses, investors, universities, cities and counties, states and tribes, and religious organizations that declare they are ‘staying in’ the Paris climate agreement, regardless of federal policy. Created in June 2017, the group’s members represent nearly $6.2 trillion of the US economy. Several non-profit and philanthropic organizations such as Bloomberg Philanthropies, CDP, Ceres, and the Sierra Club are also involved in the initiative. In 2018, We Are Still In plans to turn the commitment into action by ensuring members set targets and increase them every five years, as national governments agreed to in Paris.

Ohio counts 46 businesses and investors, cities and counties, and universities as signatories as of May 2018. Ohio mayors have taken the lead in climate commitment through two initiatives: Climate Mayors and the Global Covenant of Mayors for Climate and Energy.

Climate Mayors is a network of US mayors “working together to demonstrate leadership on climate change through meaningful actions in their communities, and to express and build political will for effective federal and global policy action.”

In the state, the mayors of Amesville, Athens, Bexley, Cincinnati, Cleveland, Columbus, Gambier, Lakewood, and Toledo have committed to uphold the Paris Agreement goals in their respective cities. In addition, Cincinnati has committed, but has not yet contributed data, to the Global Covenant of Mayors for Climate and Energy, an alliance of 7,400 cities and local governments around the world working “to organize and mobilize cities and local governments to be active contributors to a global climate solution.”

Ohio We Are Still In Members

<table>
<thead>
<tr>
<th>Businesses &amp; Investors</th>
<th>Colleges &amp; Universities</th>
<th>Cities &amp; Counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athens Impact Socially Responsible Investments</td>
<td>RGI</td>
<td>Antioco College (OH)</td>
</tr>
<tr>
<td>AW Bernard, Inc.</td>
<td>RiskSOURCE Clark Theders</td>
<td>Case Western University</td>
</tr>
<tr>
<td>B.E.S.T.</td>
<td>Rust Belt Riders</td>
<td>Cleveland State University</td>
</tr>
<tr>
<td>ChangeWorks of Heartland</td>
<td>Sage Sustainable Electronics</td>
<td>Denison University</td>
</tr>
<tr>
<td>Cleveland Institute of Art</td>
<td>Saucy Brew Works</td>
<td>John Carroll University</td>
</tr>
<tr>
<td>GARP LLC</td>
<td>Sears-Sweetland Family Foundation</td>
<td>Kenyon College</td>
</tr>
<tr>
<td>George Gund Foundation</td>
<td>Stirling Ultracold</td>
<td>Mount St. Joseph University</td>
</tr>
<tr>
<td>Go Sustainable Energy LLC</td>
<td>Sunsprout Farms of Central Ohio LLC</td>
<td></td>
</tr>
<tr>
<td>Griesinger Films</td>
<td>Tec Studio Lighting &amp; Technology Design</td>
<td></td>
</tr>
<tr>
<td>Mercy Health</td>
<td>Three Corners Capital</td>
<td></td>
</tr>
<tr>
<td>R S Bell Family</td>
<td>Third Sun Solar</td>
<td></td>
</tr>
<tr>
<td>Red212</td>
<td>Thrive Impact Sourcing and Ingage Partners</td>
<td></td>
</tr>
<tr>
<td>Region VI Coalition for Responsible Investment</td>
<td>Zimmerman &amp; Co. CPAs Inc</td>
<td></td>
</tr>
</tbody>
</table>

31 https://www.wearestillin.com/
32 http://climatemayors.org/
33 https://www.globalcovenantofmayors.org/cities/cincinnati/
About the PRI
The PRI works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance issues and to support signatories in integrating these issues into investment and ownership decisions. The six Principles were developed by investors and are supported by the UN. They have approximately 2,000 signatories from over 50 countries representing more than US$80 trillion of assets. They are voluntary and aspirational, offering a menu of possible actions for incorporating ESG issues into investment practices. In implementing the Principles, signatories contribute to developing a more sustainable global financial system. For more information, see www.unpri.org.

About UNEP FI
The United Nations Environment Programme Finance Initiative (UNEP FI) is a unique global partnership between the United Nations Environment Programme (UNEP) and the global financial sector founded in 1992. UNEP FI works closely with over 200 financial institutions who have signed the UNEP FI Statements as well as a range of partner organizations to develop and promote linkages between sustainability and financial performance. Through peer-to-peer networks, research and training, UNEP FI carries out its mission to identify, promote, and realize the adoption of best environmental and sustainability practice at all levels of financial institution operations. For more information, see www.unepfi.org.

About The Generation Foundation
“The Generation Foundation was part of the original vision of Generation Investment Management LLP when the firm was founded in 2004. The Foundation was established alongside Generation in order to strengthen the case for Sustainable Capitalism. Their strategy in pursuit of this vision is to mobilise asset owners, asset managers, companies and other key participants in financial markets in support of the business case for Sustainable Capitalism. For more information, see www.genfound.org.

CREDITS
Prepared by: Jenny Waits, Will Martindale and Colleen Orr. Edited by: Mark Nicholls