

PRI RESPONSE

US DEPARTMENT OF STATE: NATIONAL ACTION PLAN ON RESPONSIBLE BUSINESS CONDUCT

May 31, 2022

INTRODUCTION

The Principles for Responsible Investment (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 (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a range of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

The PRI develops policy analysis and recommendations based on signatory views and evidence-based policy research. The PRI welcomes the opportunity to respond to the State Department's call for public comment on the National Action Plan on Responsible Business Conduct.

ABOUT THIS CONSULTATION

This consultation responds to the US Department of State (State Department or Department) request for comment on efforts to update the United States' National Action Plan on Responsible Business Conduct.¹ The PRI welcomes the opportunity to provide input and encourages the State Department to consider the role of investors in its revised National Action Plan.

For more information, contact:

Karen Kerschke

US Policy Analyst

karen.kerschke@unpri.org

Nikolaj Halkjaer Pedersen

Senior Lead, Human Rights

nikolaj.halkjaer@unpri.org

¹ State Department, [National Action Plan on Responsible Business Conduct: Notice of Opportunity to Submit Written Comments](#)

KEY RECOMMENDATIONS

The PRI supports efforts by the State Department and related agencies to update and expand the US National Action Plan on Responsible Business Conduct. National action plans provide important signals and guidance to companies by laying out definitions and expectations on what constitutes responsible business conduct according to government and regulatory officials. As such, the PRI stands ready to assist the State Department and other agencies in this effort.

As the world's leading proponent of responsible investment, the PRI supports investor efforts to address human rights – including working conditions, modern slavery, and other social issues related to responsible business conduct – with investee companies in their portfolios and companies being considered for investment. From 2015 to 2020, for example, approximately 115 institutional investors with more than USD\$13 trillion of assets under management (AUM) engaged with 100 companies through PRI-led collaborative engagements to improve human rights practices and disclosure.² According to the PRI's reporting framework, in 2021 22% of asset owners (USD\$9.5trn AUM), and 17% of investment managers (USD\$44trn in AUM) use UN Guiding Principles on Business and Human Rights (UNGPs) or Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (OECD Guidelines) in their investment practices. In total, 499 investor signatories – of which 70 are headquartered in the US – reported using these international frameworks to guide their efforts. This number represents nearly double the figures from the prior year, pointing to a rapidly growing investor demand for corporate disclosures on human rights.

Investors increasingly recognize that sound human rights risk management leads to better financial risk management and helps to align investor activities with the evolving demands of beneficiaries, clients and regulators.³

As such, the PRI recommends the review of the National Action Plan:

- **Consider the role of investors in promoting responsible business conduct and ways the US Government can support investor action on human rights through the revised National Action Plan for Responsible Business Conduct.**
- **Seek to clarify how human rights considerations fall within the fiduciary duties of investors, both in their investment decision-making and exercise of shareholder rights such as engagement and voting activities.**
- **Seek to improve investor access to comparable, standardized data on human rights, including worker-related (sometimes referred to as human capital management, or HCM) information from all companies that operate within the US.**
- **Align recommendations with global developments and the emerging convergence around standards such as the UNGPs and OECD Guidelines.**

² See the PRI Collaboration Platform for historical engagements on social/human rights issues. AUM figures are based on reported information at 2020, rather than at the time of engagement, and may include double counting of overlaps between asset owners' AUM and their investment managers'.

³ PRI (2020), [Why and How Investors Should Act on Human Rights](#)

DETAILED RESPONSE

ENCOURAGING INVESTOR CONSIDERATION OF HUMAN RIGHTS AND INEQUALITY

The PRI's global base of 4,900 signatories manage more than US\$121 trillion in assets invested in thousands of public and private companies around the world. Whether public or private, many funding agreements grant investors with ownership or other rights to support or otherwise influence the actions of management and boards of directors. The PRI's "Principle 2" calls for signatories to be active owners and incorporate ESG issues into ownership policies and practices. This includes regular engagement with management and exercising of voting rights.⁴ Investor consideration of human rights in investment decision-making and exercise of shareholder rights can work in tandem with government agencies and regulators in promoting consideration and adoption of best practices as outlined by national action plans.

The PRI recommends the State Department work with the relevant agencies to support investor consideration of human rights, including working with the Department of Labor (DOL) and Securities and Exchange Commission (SEC) to clarify, and provide necessary information on, the relevance of human rights to investment decision-making and fiduciary duties.

SECURITIES AND EXCHANGE COMMISSION

The SEC should update guidance on fiduciary duties of registered investment advisers, clarifying that human rights-related information is increasingly material to investee companies and relevant to investment decision-making. Specific inclusion of human rights and system-level risks – which often contain barriers to ensuring human rights – would facilitate investors appropriately considering human rights-related issues. Through consideration, investors can better mitigate risks and negative impacts stemming from a failure to fully protect human rights.

DEPARTMENT OF LABOR

The DOL should clearly establish, either in the final rule of "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" or in follow-on guidance, how human rights considerations – including systemic manifestations of risks – can pose economically relevant risks to investors and as such can fall with fiduciary duty.⁵ Current regulations by the DOL create uncertainty for investors on if and when ESG factors – including human rights – fall within their fiduciary duties.⁶ The PRI supports DOL's proposed rule "Prudence and Loyalty,"⁷ that seeks to clarify the role of ESG in the investment decision-making process and exercise of shareholder rights.

⁴ PRI, [Stewardship](#)

⁵ PRI (2022), [Diversity, Equity & Inclusion: Key Action Areas for Investors](#)

⁶ PRI (December 2021), [Consultation Response: US Department of Labor: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights](#)

⁷ Ibid.

INVESTOR DATA NEEDS

Accurate and comparable information on company practices related to human rights, including human capital management, are needed for investors to identify material risks within investor portfolios and fully evaluate whether companies are acting in line with public statements, industry best practices, or investor expectations regarding human rights.

HUMAN RIGHTS DISCLOSURE

The Securities and Exchange Commission (SEC) should require detailed disclosure of human rights-related information, including human capital management (HCM) information. Investors increasingly understand the financial impact of company failure to conduct appropriate due diligence around human rights in company operations and across value chains.⁸ Obtaining meaningful data and analysis from investee companies remains a challenge in the absence of mandatory disclosure, such as due diligence legislation that is increasingly popular globally.⁹ Investors require efficient access to consistent, comparable information in order to easily identify and monitor risk and actual harm across global, diversified portfolios that can include hundreds of international companies with employees and supply chains that span the globe. The SEC could further consider requiring disclosure of whether and how executive compensation is tied to human rights.¹⁰

Human Capital Management (HCM) information, as a subset of human rights related to workers, can provide investors with key information about business' internal practices, including whether minimum worker standards are protected. HCM disclosure can, for example, provide insight on living wage, access to benefits, health and safety, as well as social protection and equity of opportunity and treatment.

The current principles-based disclosure requirement of material human capital management information by the SEC does not meet investor data needs. A recent interview project conducted by the PRI, interviewing 14 US-based signatories, showed that there is a clear need for expanded, standardized human capital management disclosure.¹¹ Studies of current human capital management disclosure since the latest rule change in 2020 support this claim. One review shows that issuers largely use boilerplate language and infrequently provide quantitative metrics.¹² Another review conducted by Stanford University found that among those who disclosed quantitative human capital metrics, the focus was mostly on diversity and health data. Other metrics related to recruitment, development, or retention, for example, were almost never disclosed. In fact, 57% of issuer disclosure reviewed included no quantitative disclosure beyond the previously required workforce size.¹³ The researchers concluded that "HCM disclosure appears to contribute to the length but not the

⁸ See for example Rights Colab's repository of evidence of negative financial impacts connected to human rights violations in the supply chain: <https://rightscolab.org/evidence-of-corporate-risk-of-harms-to-workers-in-their-value-chains/>.

⁹ See for example the World Benchmarking Alliance's [Baseline Assessment](#), which highlights that "across the 1,000 companies assessed, the absence of meaningful disclosure on social issues is startling."

¹⁰ See PRI (June 2021), [ESG-linked pay: Recommendations for investors](#) and PRI (March 2022), [Consultation Response: SEC Reopening of comment period for pay versus performance](#)

¹¹ PRI (2022), [U.S. Signatory Interview Briefing: Human Capital Management \(HCM\)](#)

¹² The CPA Journal (October 2021), [First Look at the Human Capital Disclosures on Form 10-K](#)

¹³ Stanford University, *Closer Look Series* (May 2021), [Human Capital Disclosure: What Do Companies Say about Their "Most Important Asset"?](#)

informativeness of 10-K disclosures.”¹⁴ Just Capital recently came to the same conclusion, showing that there is little consistent HCM disclosure across companies.¹⁵

The 14 participants in the PRI’s interview project on human capital management mentioned four main areas that could be covered by an SEC disclosure rule:

- **Pay information disaggregated by race and gender**, including race and gender pay audits and average hourly wages.
- **Benefits and eligibility**, including parental leave and support policies and return to work rates after, employee share-based compensation and eligibility, healthcare and retirement benefits, and financial and tax counselling benefits, turnover, internal hire rates, and a broader discussion of talent and recruitment efforts.
- **Health and Safety**, including injury and fatality rates, lost day rate, workplace safety and discrimination information, qualitative explanations of efforts to reduce exposure of workforce to human health hazards, monetary losses resulting from legal proceedings related to employee health and safety violations, and monetary losses resulting from legal proceedings related to employment discrimination.
- **Diversity, Equity and Inclusion**, including an overview of the issuer’s DE&I policy as well as disaggregated information on race, ethnicity, gender, age and location for all employees. Participants specifically highlighted the need for reporting on board diversity, supplier diversity, and policies to accommodate diverse abilities, among other data.

Requiring metrics-based disclosure, including but not exclusively on these four topics, would provide investors with key information needed to evaluate risks related to adverse human rights impacts that businesses may cause or contribute to through their own activities.

DUE DILIGENCE

Due diligence is the process enterprises should carry out to identify, prevent, mitigate and account for how they address actual and potential adverse impacts in their own operations, their supply chain and other business relationships.¹⁶ The PRI has supported due diligence legislation in the past, for example the European Commission’s proposal for a Corporate Sustainability Due Diligence Directive (CSDD).¹⁷ Due diligence requirements support investor’s sustainability assessments, enhance risk analysis and processes for impact mitigation, and provide greater understanding of company operations throughout the value chain. Due diligence disclosures further enable responsible investors to conduct better-informed engagement with investees to better manage human rights performance.¹⁸

¹⁴ Ibid.

¹⁵ Just Capital, [The Current State of Human Capital Disclosure in Corporate America: Assessing What Data Large U.S. Employers Share](#)

¹⁶ OECD, [OECD Due Diligence Guidance for Responsible Business Conduct](#)

¹⁷ PRI (March 2022), [PRI Statement: European Commission Proposal on Corporate Sustainability Due Diligence](#)

¹⁸ Investor Alliance for Human Rights, [The Investor Case for Mandatory Human Rights Due Diligence](#). Another example of investor need for this information is the [UN Guiding Principles Reporting Framework](#), a human rights disclosure initiative backed by 88 investors with USD\$5.3trn in AUM.

The State Department should consider current best practice of due diligence disclosure by companies, such as the European Union's Corporate Sustainability Reporting Directive (CSRD), which requires disclosure of:

- The due diligence process implemented with regard to sustainability matters;
- The principal actual or potential adverse impacts connected with the undertaking's value chain, including its own operations, its products and services, its business relationships and its supply chain; and,
- Any actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts.¹⁹

The European Union efforts are based on international standards and best practices and are being used as a model in other jurisdictions. US companies would benefit from continued global alignment supporting market efficiencies.

GLOBAL ALIGNMENT

The Department should look to align the US National Action Plan with global developments and the emerging convergence around standards such as the UNGPs and OECD Guidelines.

The PRI advocates for globally comparable, consistent and high-quality disclosure to enable investors to incorporate these issues and assess the human rights performance of corporate entities. Investors state that this comparability is a particular concern and regularly report to the PRI that a lack of consistent and comparable ESG data is a substantial barrier to their responsible investment practice.

The PRI has experience of contributing to public policy on sustainable finance and responsible investment across multiple markets and stands ready to support the work of the State Department further to improve investor access to decision useful human rights disclosure in the U.S.

Please send any questions or comments to policy@unpri.org.

More information on www.unpri.org

¹⁹ European Commission (2021), [Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation \(EU\) No 537/2014, as regards corporate sustainability reporting](#)