

UC Berkeley Foundation
Report on Divestment Evaluation

December 23, 2024

I. Background

The UC Berkeley Foundation (“The Foundation”) is a 501(c)3 organization formed in 1948 for the purpose of providing continuous philanthropic support from private individuals and other donors to UC Berkeley. Student tuition dollars are not invested in the Foundation’s endowment. The Foundation is governed by a Board of Trustees. The trustees provide oversight of the operations of the Foundation, which include its programs and investments. The Foundation is a separate legal entity governed by an independent, decision-making board of trustees.

The Environmental, Social, and Governance (“ESG”) Subcommittee was established by the Foundation’s Executive Committee in 2014 to ensure that ESG concerns were considered in its investment policy. The Foundation adopted divestment guidelines in 2018. The trustees recognized that the donors to the Foundation wish to support the Foundation’s main purpose of providing perpetual support for the future research, teaching, and the public service mission of the university. As a 501(c)3 organization, political action is a violation of law. Any change to the investment policy due to social or political considerations must be carefully measured against established criteria to ensure that such action is consistent with the law and Foundation policies.

II. UCBF Divestment Policy

The Foundation’s [Divestment Guidelines](#) lays out criteria that must be met in order for any divestment to take place.

The Foundation’s Divestment preamble states:

“Trustees have a fiduciary duty to generate the greatest possible financial return, subject to appropriate levels of risk, in service of the mission...the primary objective of the endowment is to preserve purchasing power for future generations while providing a stable flow of funds to the campus. Given this responsibility, there is a strong presumption against making investment decisions based on non-financial factors.”

“However, Trustees recognize that in extraordinary circumstances a company’s conduct may result in social injury that far outweighs social benefits, and that holding financial interests in it would run contrary to the university’s mission.”

The Guidelines establish five criteria which must all be met in order for the Foundation to consider divesting from a company or a clearly defined group of companies in an industry sector. If a divestment task force determines that the first three criteria are met by a divestment proposal, only then would that proposal move on to the ESG Subcommittee for consideration of the remaining fourth and fifth criteria. Criteria #4 and #5 must also be considered and applied by the shareholder, which is the Foundation, acting through its Board of Trustees. If the first three criteria are not met, then the last two criteria become moot, and the process terminates.

According to the guidelines, the task force may recommend divestment only if all of the following criteria are met:

1. The company's action or inaction is directly causing social injury, or is violating national or international law.
2. Concern about the company's behavior is broadly and consistently held within the campus community; divestment is not likely to cause deep rifts, reduce free and open debate, or otherwise affect Berkeley's ability to carry out its mission.
3. Divestment will clearly diminish the social injury in question.

If these first three criteria are met, the following two criteria would be used by the ESG Subcommittee and the Board of Trustees to determine whether or not to adopt the divestment proposal.

4. The Trustees have exhausted other practicable avenues, including the exercise of appropriate shareholder rights, to effect a change in the company's behavior, or have determined that pursuing such avenues would likely be unproductive.
5. The company has been given the opportunity to change its behavior, but has failed to do so in a way that meaningfully reduces the social injury.

III. Divestment Proposal

On May 5, 2024, then Chancellor, Carol T. Christ sent [a letter](#) to the Divest Coalition stating that she would ask the Foundation to consider divestment from a, "targeted list of companies due to their participation in weapons manufacturing, mass incarceration, and/or surveillance industries" based on the Foundation's existing Divestment Guidelines. The Foundation Trustees subsequently agreed to refer the matter to the ESG Subcommittee.

On May 24, 2024, the ESG Subcommittee met and voted to establish a Divestment Evaluation Task Force ("DETF") to consider divestment under UCBF Divestment Policy Guidelines from, "a targeted list of companies due to their participation in weapons manufacturing, mass incarceration, and/or surveillance industries." During the summer of 2024, the Subcommittee members established the

DETF and, as per the existing guidelines, invited participation and consultation with the Chancellor's Office, the Academic Senate, the Associated Students of the University of California, the Graduate Assembly, and the Division of Finance Leaders and Chief Administrative Officers group.

IV. DETF Charge

The Foundation issued a charge letter to the DETF, instructing them to take the following actions:

- A. To identify a group of companies in each of the following industry sectors:
 1. Surveillance;
 2. Weapons production;
 3. Mass incarceration.
- B. After the companies in each of these three groups are identified and defined, the selected companies ("the Companies of Interest") should be analyzed as per the first three ESG criteria.
- C. To make recommendations to the ESG Subcommittee based on the UCB Foundation ESG [Principles](#) and UCB Foundation Divestment Guidelines.

The Charge letter specifically noted that "the Foundation's holdings are separate from the endowment held by the University of California Regents on behalf of UC Berkeley, and are intended to support Berkeley's long-term mission with a horizon of perpetuity."

The Charge letter also instructed the DETF that, "The ESG Subcommittee has the obligation to evaluate the DETF recommendations and to decide whether to accept the recommendations, and if so, to coordinate on the actions required to implement criteria #4 and #5 (referenced above)."

V. DETF Process

By August 22, 2024, all 10 members of the DETF were appointed and the group met to begin work. In the interests of holding candid discussions, the Task Force members agreed to respect the confidentiality of the process.

The DETF accepted a proposal to establish a transparent and replicable filter to identify companies in the three, identified sectors from a commercial database, "S&P Capital IQ," so that others could conduct their own research using the same criteria. A list of nearly 300 companies to evaluate was identified by the DEFT.

The list of companies was provided to the Foundation's investment management company. The DETF learned that the Foundation had no direct holdings in any of the companies that emerged through the screening process from the list provided. Four managed funds in which the Foundation has investments, had holdings in 23 companies. Of the three industries the DETF examined, the only material holdings were

in the category of weapons manufacturing. Those holdings account for approximately \$15 million of the \$3 billion endowment managed by the Foundation.

VI. DETF Analysis

After holding meetings for several months, the DETF voted on each of the criteria.

- Regarding criterion #1, the DETF members were evenly split as to whether the companies involved in weapons manufacturing cause social injury or violate national or international law.
- Regarding criterion #2, a majority of the DETF members, while recognizing the evident support for this divestment among a portion of the campus community, did not find that support for this divestment proposal is broadly and consistently held within the entire campus community, including faculty, staff, and alumni. In addition, a majority voted that if adopted, this divestment proposal would cause deep rifts in the community.
- Regarding criterion #3, a majority voted that divestment would not clearly diminish the social injury.

The ESG Subcommittee reviewed the DETF's Memo and findings, and decided to accept the Task Force findings and submit it to the Executive Committee. Since all of the required 3 criteria were not met, the Divestment process terminates by the terms of the Divestment Policy.

Conclusion

As Trustees, we must follow the Divestment Guidelines and act in accordance with our obligations as fiduciaries, and the intent of the donors, for the beneficiaries who are UC Berkeley's future and current students, faculty, researchers, staff and the university's teaching, research, and public service mission.

The Foundation's donors have entrusted us with their gifts. The decision to divest is a collective action and must qualify by meeting all of the divestment criteria. While we recognize that even symbolic action can be an important tool for social change, we as fiduciaries remain bound to the requirements of the Foundation's policies and fiduciary obligations.

Fiat Lux,

The Board of Trustees