



TREASURY DEPARTMENT
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PA 17120

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TREASURER

July 24, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655 200
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

RE: Proposed Rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

Dear Employee Benefits Security Administration:

I write in strong opposition to the Department of Labor's proposed rule "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposal").

As the custodian of the Commonwealth of Pennsylvania's funds and the Chief Fiscal Officer in charge of investing Commonwealth funds, I am deeply concerned by this Proposal, the effect of which (if not necessarily the intent) will be to significantly limit the use of environmental social and governance ("ESG") investments. ESG investments simply allow everyday citizen investors to exercise their choice to use the power of their dollars to improve the social impact of the businesses they invest in without sacrificing the opportunity for a secure retirement.

The Proposal seeks to upend decades of precedent allowing ERISA-regulated retirement plans to invest responsibly under appropriately strict conditions. This precedent has its origins in DOL guidelines around economically targeted investments ("ETIs") and more recently has focused on investments guided by ESG considerations.

The Proposal is fundamentally inconsistent with the purposes of ERISA, which was adopted to protect retirement savers by setting high standards for retirement plan fiduciaries, requiring them to act with due care, skill, prudence, and diligence and to avoid conflicts of interest. The ultimate goal of ERISA is to maximize retirement savings for plan participants.

The overwhelming majority of rigorous, peer-reviewed academic studies have concluded that ESG-guided investments have in general performed as well as or better than comparable

conventional investments. This is backed up in reports by leading industry analysts such as Morningstar. Given this overwhelming evidence, issuing onerous regulations that narrowly and specifically target and burden this type of investment, as the DOL now proposes, is contrary to the purpose and intent of ERISA. By discouraging and deterring fiduciaries from investing in ESG-guided funds, the DOL is effectively narrowing the field of available investment options for ERISA plans, which could force participants into potentially lower-performing investments resulting in lost long-term retirement savings. Narrowing the number of available investments will also frustrate investors who seek to maximize diversity in their long-term retirement strategies.

For decades, the DOL has allowed fiduciaries to consider ESG factors, whether or not they can be proven to be economically material, as tiebreakers in choosing among investments that are comparable from a risk/return perspective. The use of nonfinancial considerations as tiebreakers has been an essential part of ERISA practice, allowing fiduciaries to take into consideration factors, including some ESG factors, that cannot be conclusively shown on an individual basis to have a positive economic effect, but whose application does not diminish financial returns.

The proposed rule would require fiduciaries to document that investments are “economically indistinguishable” in order to be considered comparable for these purposes. There is no basis in real-world investment practice that supports the proposition that investments must be “economically indistinguishable” in order to be considered comparable on a risk/return basis. Since all investments have distinguishable economic characteristics, this change effectively eliminates the possible use of an ESG factor as a tiebreaker. While the DOL’s commentary states that the use of ESG factors as tiebreakers would be continued, the threshold for risk/return comparability has been raised to an unachievable level, effectively preventing fiduciaries from considering important factors that cannot be translated neatly into return metrics.

The proposed rule also fails to recognize the direction that retail investing is trending. According to the US SIF Foundation, ESG-mandated assets could make up 50% of all managed assets in the United States by 2025. As a result, the Deloitte Center for Financial Services believes that investment managers are likely to respond to this demand by potentially launching up to 200 new ESG funds by 2023. Thus, the Proposal runs completely counter to strong signals that the marketplace is sending about the relevance and value of ESG investments.

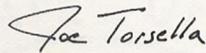
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ESG investing has been an effective, free-market tool for producing needed change, and its popularity with investors is growing rapidly. Targeting ESG investing for onerous and burdensome regulatory treatment is plainly inconsistent with ERISA's purposes. This action appears political, and responsive only to narrow corporate interests that have long opposed responsible investment practices that carefully broaden the range of factors that many prudent investors consider relevant to shareholder value. Interference in the investment preferences of retirement investors by the DOL on political grounds, rather than to fulfill ERISA's purposes, would be arbitrary and capricious, an infringement on the economic rights of those investors and a potential violation of their First Amendment rights.

For these reasons, on behalf of the citizens of Pennsylvania, I respectfully request that the Proposal be immediately withdrawn from further consideration.

Thank you for your consideration.

Sincerely,



Joseph M. Torsella
State Treasurer of Pennsylvania