



**SCOTT F. PERRY, CAIA**  
PARTNER

July 27, 2020

Office of Regulations and Interpretations  
US Department of Labor  
Room N-5655  
200 Constitution Avenue NW  
Washington, DC 20210

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

Ladies and Gentlemen,

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

NEPC is one of the industry's largest independent, full-service investment consulting firms, serving over 350 retainer clients with total assets over \$1.1 trillion. We specialize in certain client types, including private wealth, endowments, foundations, healthcare, defined benefit and defined contribution employee benefit plans (corporate, public, and Taft-Hartley), and insurance assets. We have also dedicated significant time and effort on the topic of ESG, and therefore feel that we are well-positioned to provide feedback on the proposed rule referenced herein.

The Department of Labor fails to articulate a rational connection between the relevant facts and the proposed rule. In our view, the proposal reveals a fundamental misunderstanding of how professional investment managers use environmental, social and governance ("ESG") criteria as an additional level of due diligence and analysis in the portfolio construction process. As an Investment Consulting firm that analyses investment managers, we feel that we have a strong understanding of the increasing use of ESG factors being utilized by investment managers because they view these factors as material to financial performance.

We believe the proposed rule faces the following challenges:

A. The proposed rule assumes ESG considerations are not widely applied, but there is a history of effective use of material ESG considerations by mainstream investors. For example, PRI signatories (showing commitment to standards of sustainable investing) increased from less than 10 in April 2006 to over 2000 in 2018. ["The Role of Investors in Supporting Better Corporate ESG Performance", Ceres, February 2019](#). Further, 73% of global investors surveyed by the CFA Institute in 2015 indicated they take ESG issues into account in their investment analysis and decisions. ["CFA Institute Survey: How do ESG Issues Factor into Investment Decisions?", CFA Institute, August 2015](#)

B. The proposed rule assumes ESG considerations are not material, but the Sustainability Accounting Standards Board standards adoption process is based on financial materiality legal standard. The SASB framework is underpinned by the legal basis of materiality in the US. Its standards have undergone vetting by industry experts, comprising a balanced group of one-third corporate professionals, one-third investors, and one-third other



stakeholders. Its determinations are guided by its core objectives to provide the users and providers of financial capital with material, decision-useful, cost-effective disclosure. - [SASB Conceptual Framework](#). Further, SASB standards are designed for inclusion in mandatory financial reports. In the US, this takes the shape of the Form 10-K. U.S. securities law firmly undergirds SASB's work and process, providing a solid foundation for the use of SASB standards by U.S. companies. - [SASB.org](#)

C. The proposed rule assumes ESG considerations could violate fiduciary duty, but other jurisdictions' regulatory interpretations support prudent investor consideration of ESG factors as material and within fiduciary duty. For example, The Occupational Pension Schemes (Investment) Regulations require pension funds' Statement of Investment Principles to cover "the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realization of investments; and their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments." This was strengthened by supporting guidance from The Pensions Regulator on the importance of ESG issues to prudent scheme practice. [Guide to Investment Governance – The Pensions Regulator](#)

The Proposal is likely to have the perverse effect of dissuading fiduciaries, even against their better judgment, from offering options for their plans that consider ESG factors as part of the evaluation of material financial criteria. As a result, it will unfairly, and harmfully, limit plan diversification and perhaps compel plan participants to choose options that are either more risky or less profitable than might otherwise be selected.

I respectfully request that the Proposal be withdrawn. Thank you for your consideration of these comments.

Sincerely,  
Scott F. Perry  
Partner