



**Filed electronically at <http://www.regulations.gov> (Docket ID EBSA-2020-0004; RIN 1210-AB95)**

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Washington, D.C. 20210  
Attention: Financial Factors in Selecting Plan Investments Proposed Regulation

**Re: Financial Factors in Selecting Plan Investments  
RIN 1210-AB95**

On behalf of WBCSD North America and the World Business Council for Sustainable Development (WBCSD)'s "Aligning Retirement Assets" working group, I am writing in opposition to the proposed rule RIN 1210-AB95. We believe the rule reflects an outdated position on fiduciary duty and could potentially mislead millions of Americans in both the corporate and nonprofit arenas who depend on their 401(k)s or 403(b)s for retirement.

WBCSD is a global, CEO-led organization of over 200 leading businesses working together to accelerate the transition to a sustainable world. We help make our member companies more successful and sustainable by focusing on the maximum positive impact for shareholders, the environment and societies. The WBCSD North America office provides a platform upon which to engage leading North American businesses from a range of sectors in WBCSD initiatives, including innovative and scalable business solutions that address the most pressing social and environmental sustainability challenges.

Since June 2018, WBCSD has been collaborating with the top asset managers, investment consultant and forward-looking corporate plan sponsors in our membership, to work on the "Aligning Retirement Assets" (ARA) project. The goal of this project is to encourage responsible retirement plan investments since thoughtfully considering ESG factors in investment processes can result in improved risk-adjusted returns

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for participants and beneficiaries over the longer term. An additional benefit of this work is that it may help retirement plan sponsors to meet a growing demand for sustainable investments and increase plan engagement, participation and savings rates. Furthermore, plan sponsors have an opportunity to reflect and extend the underlying company's core values and commitment to sustainability by making investment decisions informed by ESG factors, without compromising returns.

Based on our observation and analysis in the retirement industry, we would like to provide the following comments.

**First, the proposed rule misinterprets the fact that thoughtfully considering ESG factors in investment processes can result in improved risk-adjusted returns for participants and beneficiaries over the longer term.** A meta-study of over 2,000 primary empirical studies conducted since the 1970s identified that approximately 90% of these primary studies identified a non-negative relationship between ESG criteria and corporate financial performance, with a majority of those studies reporting positive results.<sup>1</sup> Furthermore, an academic study analyzing a sample of more than 2,000 U.S. companies over a 20 year time period has shown that companies with high performance on financially material ESG issues within their businesses realized an annualized outperformance of over 6%, whereas companies with low performance on material factors saw alphas ranging between -2.9% to 0.6%.<sup>2</sup> Considering ESG factors within investment decision-making is therefore not an impediment to financial performance, and can in fact enhance performance, if financially material factors affecting underlying companies are identified and analyzed by investors.

**Second, the proposed rule does not recognize the evolution of fiduciary responsibilities but still views the issue through a static, narrowly defined lens.** Modern fiduciary duties require investors to incorporate financially material ESG factors into their investment decision making, consistent with the timeframe of the obligation, as stated in the Fiduciary Duty in the 21st Century report.<sup>3</sup> Considerations of fiduciary duty lie at

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<sup>1</sup> <https://www.tandfonline.com/doi/full/10.1080/20430795.2015.1118917>

<sup>2</sup> <http://nrs.harvard.edu/urn-3:HUL.InstRepos:14369106>

<sup>3</sup> <https://www.unepfi.org/wordpress/wp-content/uploads/2019/10/Fiduciary-duty-21st-century-final-report.pdf>



the heart of how retirement plans are governed and must be considered in any course of action a retirement plan might take. Based on our research, ESG integration aligns with the duty of loyalty, duty of prudence and duty to diversity for retirement plan fiduciaries. The sustainable strategies are generally employed by investors seeking to broaden the scope of their analysis. Considering material non-financial or ESG factors from a risk and opportunity perspective may help plan participants avoid losing investment value or enhance returns. Additionally, given the extensive ESG data investors have access to today, it would seem imprudent to disregard considering such data in investment decisions simply because it is “new” or “non-standard.” Instead, it would be sensible that a prudent person would consider as many material data points as possible in making investment decisions.

**Third, the proposed rule underestimates the growing demand from ERISA plan members for sustainable investing options.** According to the Morgan Stanley Sustainable Signals survey, 85% of US individual investors now express interest in sustainable investing strategies, 95% among millennials.<sup>4</sup> Investors also want the ability to tailor their investments and seek more product choices. Many investment managers are rapidly developing their ESG expertise in response to this market demand. For the market of ERISA plans, ESG option is usually added to the existing plan lineup and can enhance participant diversification potential.

### **Empirical evidence based on the WBCSD’s Aligning Retirement Assets (ARA) project**

There is no evidence that plan fiduciaries are inappropriately selecting ESG investments under DOL guidance that has been in effect over the past three decades. In 2018, my organization started the “Aligning Retirement Assets” initiative to identify the steps a company could take to include ESG funds into their company’s 401(k) plan. Our collaboration partners included Allianz Global Investors, BlackRock, Legal & General Investment Management, Mercer, Natixis Investment Managers and the Principles for Responsible Investment. Through our work, we saw firsthand the rigor and due diligence a company’s plan fiduciary

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<sup>4</sup> [https://www.morganstanley.com/pub/content/dam/msdotcom/infographics/sustainable-investing/Sustainable\\_Signals\\_Individual\\_Investor\\_White\\_Paper\\_Final.pdf](https://www.morganstanley.com/pub/content/dam/msdotcom/infographics/sustainable-investing/Sustainable_Signals_Individual_Investor_White_Paper_Final.pdf)



approaches in evaluating the performance of an ESG fund before adding it to their retirement platform. Numerous of corporate plan sponsors have gone through their process and started to provide ESG investing vehicle as option(s) or QDIA to their employees. In short, if an ESG fund did not provide a comparable financial return as other funds, it was not added. Period.

In conclusion, we need policies that recognize the present and future impact of ESG factors on financial performance, and make the ESG strategy available to all types of investors including retirement plan participants. Therefore, we urge the Department of Labor to modify the proposed rule considering the mainstream market view on ESG.

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