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July 30, 2020

SUBMITTED VIA REGULATIONS.GOV

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

RE: RIN 1210-AB95, "Financial Factors in Selecting Plan Investments"

Dear Secretary Scalia:

We write in response to the June 30, 2020, notice of proposed rulemaking on "Financial Factors in Selecting Plan Investments."¹ The Department of Labor's (DOL) proposed rule updates the investment duties regulation to clarify that the *Employee Retirement Income Security Act of 1974* (ERISA) prohibits fiduciaries from subordinating the financial interests of retirement plan participants to non-financial agendas. We are encouraged by DOL's ongoing efforts to protect the retirement savings of America's workers and their families given the growing interest in environmental, social, and governance (ESG) considerations in investing and DOL's long history of sub-regulatory guidance on the matter.

Republican Members of the House Committee on Education and Labor, the committee of jurisdiction over ERISA, are dedicated to enhancing retirement security by ensuring that DOL properly interprets and enforces ERISA's fiduciary standards, including the selection and monitoring of plan investments. ERISA's fundamental purpose is to protect the employee benefits of America's workers and their beneficiaries. Central to this protection is DOL's enforcement of ERISA's fiduciary duties of loyalty and prudence. In applying ERISA's duties of loyalty and prudence to investment decisions, DOL has long held that plan fiduciaries "must be focused solely on the plan's financial risks and returns, and the interest of the plan participants and beneficiaries in their plan benefits must be paramount."²

¹ 85 Fed. Reg. 39,113 (proposed June 30, 2020).

² *Id.* at 39,116.

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Retirement plan participants are limited in their ability to exercise control over the investment of their plan assets; this is especially true of participants in traditional defined benefit pension plans. As Republican Members of the Committee on Education and Labor explain in the Committee Report accompanying H.R. 397, the *Rehabilitation for Multiemployer Pensions Act of 2019*, pension plan investment decisions must be focused solely on the retirement security of pensioners:

Plan participants, who rely on investment performance to ensure their retirement security, relinquish control over plan investment decisions trusting that the plans will be managed by experts with only the worker's retirement security in mind. As such, workers and retirees place their faith in plan trustees to manage plan assets in a way that ensures promised benefits will be available upon retirement. To allow multiemployer pension funds, and the trillions of dollars of assets they manage on behalf of pensioners, to be used to advance political agendas or to promote the social policy whims of plan trustees would be unconscionable.³

Under ERISA, a fiduciary's duty of loyalty prohibits them from prioritizing political agendas or social policy preferences over the financial security of America's workers. Plan investments that sacrifice return or assume additional risk to further non-financial goals at the expense of workers' retirement security are simply unacceptable. We agree with your rationale in proposing this rule: "ESG factors are often touted for reasons that are non-pecuniary—to address social welfare more broadly, rather than maximize returns.... That trade-off may appeal to some investors, but it is not appropriate for an ERISA fiduciary managing other people's retirement funds."⁴

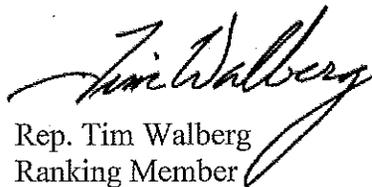
It is incumbent on DOL to ensure its policies and regulatory guidance are consistent with the fundamental tenets of ERISA and serve to protect the retirement savings of America's workers and their families. We believe fiduciaries must be laser-focused on their obligations to retirement savers, and DOL's heightened attention regarding the application of non-financial considerations in this context is to be applauded.

Thank you for your consideration of these comments.

Respectfully submitted,



Rep. Virginia Foxx
Ranking Member



Rep. Tim Walberg
Ranking Member
Subcommittee on Health, Employment,
Labor, and Pensions

³ H. REPT. NO. 116-159, pt. 2, at 140 (2019).

⁴ Eugene Scalia, *Retirees' Security Trumps Other Social Goals*, WALL ST. J., June 23, 2020.