



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

Re: Financial Factors in Selecting Plan Investments
Proposed Regulation (RIN 1210-AB95)

Dear Director Canary:

On behalf of Hamilton Lane, thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" ("Proposal" or "NPR"). Hamilton Lane is an SEC-registered alternative investment management firm providing private markets services to institutional investors around the world for the past 29 years. As of March 31, 2020, Hamilton Lane has \$68.7 billion of assets under management through our broad and diverse client base. More than 20% of our clients and investors are ERISA pension plans. We are proud to manage private markets portfolios on behalf of these organizations and the beneficiaries they represent.

Our firm has long promoted integrating environmental, social and governance (ESG) considerations in private markets investment practices. Hamilton Lane has been a signatory to the UN Principles for Responsible Investment since 2008, and we are committed to incorporating ESG factors into our investment activities, as we believe that ESG integration is essential to be able to fulfil our fiduciary obligation to engage in appropriate risk management.

It is our view that the NPR misconstrues ESG integration and would lead to confusion and additional costs for retirement plan fiduciaries. We therefore urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

Despite the aim of providing clarity for ERISA fiduciaries, the Proposal creates confusion. This appears to be, in part, because of a failure to distinguish between ESG integration and economically targeted investing (ETI). ESG integration is the consideration of ESG factors as part of prudent risk management and a strategy of making investments aimed at responding to those risks. ETIs are investments that aim to provide financial returns as well as collateral, non-financial benefits. For example, ETIs often advertise job creation or climate impact as goals of the investment.

ESG Integration

The Proposal states that an ERISA fiduciary has fulfilled its obligations if they have "selected investments and/or investment courses of action based solely on pecuniary factors." It goes on to state that, "ESG factors and other similar factors may be economic considerations." There is now an extensive body of research that makes clear that ESG factors are material investment considerations. This is the basis for our decision to integrate ESG factors into our investment actions.

A more narrowly focused policy by the DOL that specifically clarifies that fiduciaries must integrate material factors into their investment actions and that ESG factors may be material would be appropriate. We are concerned,



however, that the remaining components of the proposal create confusion and could cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

The “all else being equal test”

Under the “all else being equal test,” which has been in place since 1994, fiduciaries may select an investment that provides collateral benefits only after they have determined that the risk and return profile of that investment option is substantially similar to that of competing options that would meet the financial needs of the fund just as well.

The Proposal’s discussion of the “all things being equal” test is cause for confusion because, while the test was originally developed to guide the consideration of ETIs and the discussion in the Proposal appears to envision the selection of an ETI investment, the language of the Proposal does not distinguish the application of this test from the broader discussion of ESG integration.

Conclusion

The Proposal mischaracterizes ESG integration and fails to distinguish between ESG integration and economically targeted investing. This is likely to lead to confusion for ERISA fiduciaries and cost to plan savers. If the Proposal is finalized in its current form, we are concerned that fiduciaries will struggle to fulfil their obligations to integrate all financially material risk factors, while also trying to respond to the language in the Proposal that appears aimed at preventing fiduciaries from taking account of these same risks.

As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. If the Proposal goes into effect, it will undermine our ability to act in the long-term best interest of our beneficiaries. As such, we urge you to allow the existing guidance to remain in effect and not move forward with a final rule.