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General Comment

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Employee Benefits Security Administration
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RE: Financial Factors in Selecting Plan Investments

My comments below support the proposed rule which clarifies that Environmental, Social or Governance (ESG) limitations are not permissible objectives for ERISA fiduciaries.

Fundamentally, ESG funds impose standards upon investment selection that lie outside the machinery of state or federal governance. As such, these criteria are beyond democratic (or public) determination. Instead, these requirements are developed by special interest groups with specific aims. As evidence, consider the wide ranging, changing and non-consensus nature of

these requirements. While individual investors may freely adopt such criteria for their personal or personally controlled investments, fiduciaries are entrusted with the specific responsibility of the optimal financial performance of other people's investments under their care. Allowing ESG to be a basis for ERISA investment essentially cedes such funds to the private interests of the fiduciary or her delegates.

Nearly every ERISA Investment duty is violated by any permitted inclusion of ESG limitations:

1. Diversification: ESG requirements limit diversification and preclude investment across the widest possible universe of options.
2. Liquidity: While ESG investments may be liquid, the inclusion of ESG requirements will naturally lead fiduciaries to prefer lesser liquid selections which meet ESG limitations over more liquid non-ESG approved investments.
3. Prudence: The universe of ESG approved products is necessarily a subset of the universe of non-ESG approved products. Prudent investing within the unfettered universe of possible investments will at some point conflict with prudence as limited by ESG requirements. Notably, prudence is connected logically to diversification and liquidity.
4. Loyalty: The fiduciary must be loyal to meet the financial obligations of the sponsoring organization. Pension plans do not offer benefits that are contingent on ESG performance. They offer benefits independent of ESG limitations. For example, no pension plan says, "we will provide you a pension if the ESG limited portfolio allows for it." On the contrary, they describe pension benefits as assumed to be realizable within the universe of possible investments. Moreover, ESG investing is fundamentally a demand for loyalty to certain Environmental, Social and Governance demands. A fiduciary cannot serve two masters. She must be loyal to either one or the other. The proposed rule ensures that the fiduciary's loyalty remains undivided.
5. Care: Like the above, the smaller universe of ESG portfolios must be less diverse, less liquid and less broadly supportive of the pensioner. Fiduciaries are already required to provide a full measure of care in the handling of pensioner assets. By introducing additional care to meet ESG guidance – care for the more fundamental duties will be constrained.

On its face, the requirement that: "fiduciaries may never subordinate the interests of plan participants and beneficiaries in their retirement income to non-pecuniary goals." is obviously in the public interest. While ESG interests may or may not be legitimate, they represent de facto private and special interests and as such clearly fail to necessarily fall inside the public interest. By contrast, the original fiduciary duties of Diversification, Liquidity, Prudence, Care and Loyalty are obviously in the public interest and should be maintained, undiluted by special and varied interests.

Thanks for your consideration.

Respectfully,

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