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Financial Factors in Selecting Plan Investments

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Submitter Information

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General Comment

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 (Your Organization Name), we thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" ("Proposal" or "NPR"). Integrating environmental, social, and governance (ESG) factors into investment activities is essential to fulfilling fiduciary obligations to engage in appropriate risk management. We believe that the Proposed Rule fundamentally misconstrues the importance and role of ESG integration in reducing risk and increasing returns. Further, the Proposed Rule is likely to lead to confusion and costs for retirement plan fiduciaries. We, therefore, urge you to retain existing guidance and not move forward with a final rule.

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, inappropriately suggesting that the documentation requirement is necessary whenever ESG factors are considered. fiduciaries to offer ETIs as options that participants may select in participant-directed

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 costs to plan savers. If the Proposal is finalized in its current form, we are concerned that fiduciaries will struggle to fulfill their obligations to integrate all financially material risk factors while also trying to respond to the language in the Proposal that appears to be aimed at preventing fiduciaries from taking account of these same risks.

Institutional investors have a duty to act in the best, long-term interests of their 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 Proposed Rule goes into effect, it will undermine fiduciaries' ability to act in the long-term best interest of their beneficiaries. As such, we urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

[Sincerely, Linda L. Humphrey