

December 13, 2021

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**Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655**

**Attn: Prudence and Loyalty in Selecting Plan Investments and Exercising  
Shareholder Rights**

**U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210**

Submitted via Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov)

**Re: Proposed Regulation on ‘Prudence and Loyalty in Selecting Plan  
Investments and Exercising Shareholder Rights’ [RIN 1210-AC03]**

Dear Sir/Madam:

State Street Global Advisors, the investment management arm of State Street Corporation, appreciates the opportunity to provide comments on the Department of Labor’s (the “Department”) proposed rule entitled *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights* (the “Proposed Regulation”). With \$3.9 trillion in assets under management, State Street Global Advisors is the world’s fourth-largest asset manager. Further, State Street Global Advisors is one of the largest asset managers working with both US defined benefit (“DB”) and defined contribution (“DC”) plans today. State Street Global Advisors manages more than \$860 billion globally in DB assets.<sup>1</sup> Under our services to DB clients, the Global Fiduciary Solutions (“GFS”) group manages more than \$150 billion in client assets across Outsourced Chief Investment Officer (“OCIO”) and other asset allocation mandates.<sup>2</sup> With nearly 40 years of experience in the DC market, we manage more than \$785 billion in DC assets around the world, of which over \$585 billion belong to participants in the United States.<sup>3</sup>

We commend the Department on the release of the Proposed Regulation. The Department has engaged in extensive outreach to stakeholders regarding the impacts of the *Financial Factors in Selecting Plan Investments and Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* regulations issued during the Trump administration (the “2020 Regulations”), and we believe the Proposed Regulation, issued on October 13, 2021, reflects careful consideration of those stakeholder views. The Proposed Regulation appropriately balances the underlying fiduciary tenets of the Employee Retirement Income Security Act of 1974 (“ERISA”),

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<sup>1</sup> As of March 2021

<sup>2</sup> As of December 2020

the duties of prudence and loyalty, with the consideration of environmental, social, or governance (“ESG”) factors, which, as the regulation notes, may be material to the risk or return characteristics of an investment or proxy voting decision.

As we noted in our July 30, 2020 letter to the Department, as a fiduciary, State Street Global Advisors has a duty to act prudently and in the best interest of our clients, which, increasingly, includes a consideration of ESG factors relevant to the performance of the companies in which our clients invest. We believe that addressing material ESG issues is good business practice and essential to a company’s long-term financial performance, and we seek to capture these drivers of long-term shareholder value for our clients. Under an ESG integration strategy, value-driving ESG factors are incorporated into the investment analysis and investment decisions, alongside traditional financial factors. We refer back to the evidence supporting the value of ESG integration in investment strategies, which is substantial and continues to grow.<sup>4</sup>

We believe that the Department has struck an appropriate balance between fiduciary duty and the ability to consider ESG factors in the operative text of the Proposed Regulation. Below we offer a few observations for consideration by the Department:

- Section 404(b)(2)(ii)(C): Section (b)(2)(ii) of the Proposed Regulation includes a list of appropriate factors for a fiduciary to consider when evaluating an investment or investment course of action. Subsection (C) states that the consideration of the projected return of the portfolio relative to the funding objectives of the plan “may often require an evaluation of the economic effects of climate change and other environmental, social or governance factors...” Although we generally agree with this premise, we would caution the Department against using language that might imply a requirement to consider ESG factors in all cases. As we stated in our letter dated July 30, 2020, we believe that ESG factors should be treated no differently than other factors when a fiduciary is evaluating an investment or investment course of action. Fiduciaries consider a multitude of factors when determining the appropriate fund or funds for their plans and that evaluation may change over time. Therefore, it is critical that fiduciaries be given flexibility to determine what factors are in the best interest of plans and their participants at any given time, and so we suggest that the Department consider changing the term “may often require” to “which may include”.

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<sup>4</sup> Stronger cash flows, lower borrowing costs and higher valuations are common features of companies focused on managing material sustainability risks. Moreover, an analysis of over 2000 studies shows a compelling correlation between strong corporate sustainability and economic performance, with 90% of those studies ultimately rebutting claims that investments through an environmental, social or corporate governance lens necessarily means diminished financial returns. Similar data can be found both in the 2018 U.S. Government Accountability Office (GAO) report and a study commissioned by the Department itself in 2017 where results show a positive correlation between ESG investing and financial return – please see State Street Global Advisors’ 2020 DOL response for citationS --- 00593.pdf (dol.gov).

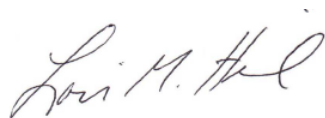
- Section 404(b)(4): In an effort to provide flexibility in the consideration of investment factors as discussed above, we believe that the examples included in subsection (b)(4) may not be needed. We believe that the duties of prudence and loyalty outlined in the Proposed Regulation, coupled with the permission to consider any factor in the evaluation of an investment or investment course of action, are sufficient to provide plan fiduciaries with the flexibility they need to appropriately consider plan investments. Further, although they are intended as examples, the list of factors in subsection (b)(4) could be seen as more important to consider than other factors given that they are the only examples provided. As stated above, we believe that plan fiduciaries should be afforded maximum flexibility in evaluating investment options and feel that the duties of prudence and loyalty already outlined in the Proposed Regulation are sufficient for this purpose. We applaud the Department for clarifying that ESG factors may be material to the risk-return analysis of an investment both in the preamble and the operative text of the Proposed Regulation. However, we respectfully suggest that the specific examples be deleted from the operative text of the regulation. Therefore, subsection (b)(4) would delete everything following the clause...is material to the risk-return analysis.

We applaud the Department for the issuance of the Proposed Regulation, as well as the outreach and engagement with us and other stakeholders throughout this process. We look forward to continuing to work with the Department as you finalize the regulation.

Please feel free to contact [Karen\\_Wong@ssga.com](mailto:Karen_Wong@ssga.com) should you wish to discuss State Street Global Advisors' submission in further detail.

Sincerely,

Lori Heinel



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