

December 13, 2021

Ali Khawar  
Acting Assistant Secretary  
US Department of Labor  
Room N-5655  
200 Constitution Avenue NW  
Washington, DC 20210

RE: Proposed rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (RIN 1210-AC03)

Dear Mr. Khawar:

Thank you for the opportunity to provide comments in response to the Department of Labor's proposed rule, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (RIN 1210-AC03) (the "Proposal").

Our firm works with clients who are focused on Sustainable, Responsible and Impact (SRI) investments. Currently, our regulatory AUM is just over \$30,000,000, and we serve over 100 households. Our clients are committed to Environmental, Social and Governance (ESG) investments because they desire their portfolios to be aligned with their values.

We commend the Department of Labor (DOL) for proposing this rule and recognizing the importance of considering ESG criteria in retirement investments. Investment managers increasingly analyze ESG factors precisely because they view these factors as material to financial performance. Numerous studies show that the consideration of ESG criteria in investment analysis generally produces investment performances comparable to or better than non-ESG investments. There is no doubt that funds that use ESG criteria are consistent with long-term retirement objectives. Sustainable investing assets now account for \$17.1 trillion—or 1 in 3 dollars—of the total US assets under professional management, according to the US SIF Foundation's 2020 biennial Report on US Sustainable and Impact Investing Trends. This represents a 42 percent increase over 2018. <sup>(1)</sup>

Another important change made in the proposal is the removal of the prohibition of ESG criteria in Qualified Default Investment Alternatives or QDIAs. DOL correctly states that if a fund meets the standards set by the QDIA regulation <sup>(2)</sup>, it is suitable for consideration. In terms of proxy voting and shareholder rights, paragraph (d) makes important and needed changes from the current rule. We are pleased that the proposal returns to the long-held standard that the proxy vote is an asset of the plan and should be stewarded as such.

The listing of specific climate change, governance and workforce practice criteria in paragraph (b)(4) (i-iii) is too limited. The rule should exclude examples in paragraph (b)(4) (i-iii) as the list may cause some fiduciaries to limit themselves to factoring in only those criteria. We believe

the first paragraph of (b)(4) sufficiently addresses the breadth of criteria that can be considered: “A prudent fiduciary may consider any factor in the evaluation of an investment...that, depending on the facts and circumstances, is material to the risk-return analysis.”

Additionally, we believe that in paragraph (c)(3), the term “equally serve” may not provide the clarity that fiduciaries need. A better alternative would be to allow collateral benefits after a fiduciary concludes that “equally prudent investments, or investment courses of action, serve the financial interests of the plan.”

Thank you for your consideration of these comments.

Sincerely,

Jesse Eiyneck, Founder, CERTIFIED FINANCIAL PLANNER ™

Janice Fier, CERTIFIED FINANCIAL PLANNER ™, Accredited Investment Fiduciary®

(1) Report on US Sustainable and Impact Investing Trends 2020: <http://www.ussif.org/trends>

(2) 29 CFR 2550.404c-5 (Fiduciary Relief for Investments in Qualified Default Investment Alternatives)