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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attn: Prudence and Loyalty in Selecting Plan Investments and
Exercising Shareholder Rights

Re: RIN 1210-AC03, Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Dear Sir or Madam:

Teachers Insurance and Annuity Association of America (“TIAA”) and its wholly-owned subsidiary Nuveen, LLC (“Nuveen”), referred to together as TIAA, appreciate the opportunity to submit this comment in response to the proposed rule issued by the U.S. Department of Labor (the “DOL”) to amend the “Investment duties” regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)¹ (the “Proposal”).² We applaud the DOL’s efforts to clarify the duties that apply to ERISA retirement plan fiduciaries when selecting investments and exercising shareholder rights such as proxy voting. In particular, we commend the DOL for proposing amendments that would give fiduciaries greater comfort and confidence in including appropriate environmental, social, and governance (“ESG”) factors when evaluating investment options and in proxy voting. It is clear that the DOL has carefully considered stakeholder input on this subject, and we recognize that the proposed amendments reflect the comments and perspectives that have been shared by TIAA and others in the industry. Overall, we are strongly supportive of the Proposal, but would suggest one minor clarification, as discussed in more detail below.

¹ 29 C.F.R. § 2550.404a-1.

² *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 86 Fed. Reg. 57272 (Oct. 14, 2021), available at: <https://www.govinfo.gov/content/pkg/FR-2021-10-14/pdf/2021-22263.pdf>.

I. About TIAA.

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over its century-long history, TIAA's mission has always been to aid and strengthen the institutions and participants it serves and to provide financial products that meet their needs. To carry out this mission, TIAA has evolved to include a range of financial services, including asset management and retail services. Today, TIAA's investment model and long-term approach serve more than five million retirement-plan participants at more than 15,000 institutions. With its strong nonprofit heritage, TIAA remains committed to our mission of serving the financial needs of those who serve the greater good.

Nuveen, the investment management arm of TIAA, offers a comprehensive range of outcome-focused investment solutions designed to secure the long-term financial goals of institutional and individual investors. The Nuveen organization includes investment advisers that collectively manage over \$1 trillion in assets, including in the Nuveen and TIAA-CREF registered fund complexes, as well as in private funds and structured vehicles. Nuveen takes an ESG investment approach that is guided by its Responsible Investing Policy,³ and is a top-5 sustainable funds asset manager.⁴ Nuveen also executes TIAA's proxy voting strategies at thousands of shareholder meetings across the U.S. and around the world every year.

II. TIAA is broadly supportive of the amendments in the DOL's Proposal.

We are pleased to see that many of the changes in the Proposal reflect the comments and suggestions made by TIAA and our industry peers to the originally proposed versions of the "Financial Factors in Selecting Plan Investments" rule (the "Financial Factors Rule")⁵ and the "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" rule (the "Proxy Voting Rule").⁶ We commend the DOL for taking into account the viewpoints of a broad array of stakeholders in formulating the Proposal, and for being responsive to the common concerns expressed by many in the industry. The DOL's openness to engaging with interested parties throughout its review of the Financial Factors Rule and Proxy Voting Rule has, in our view, resulted in a Proposal that improves upon the current versions of these rules. We are particularly supportive of the following provisions:

Qualified Default Investment Alternatives ("QDIAs"). We applaud the DOL for proposing to remove the current prohibition on the inclusion of an investment as, or as a component of, a QDIA if its

³ Nuveen Policy Statement on Responsible Investing, *available at*: <https://documents.nuveen.com/Documents/Nuveen/Default.aspx?uniqueId=0D9B86F3-64FC-481A-BC65-F35115024886>.

⁴ Morningstar Sustainable Funds U.S. Landscape Report (Feb. 2021).

⁵ *Financial Factors in Selecting Plan Investments*, 85 Fed. Reg. 72846 (Nov. 13, 2020), *available at*: <https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-24515.pdf>.

⁶ *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights*, 85 Fed. Reg. 81658 (Dec. 16, 2020), *available at*: <https://www.govinfo.gov/content/pkg/FR-2020-12-16/pdf/2020-27465.pdf>

investment objectives or goals or its principal investment strategies include, consider, or indicate the use of one or more non-pecuniary factors. As we argued in our 2020 comment letter in response to the proposed version of the Financial Factors Rule,⁷ the Rule's blanket prohibition is neither rooted in law nor warranted from a public policy standpoint. We continue to believe that the final Financial Factors Rule inappropriately restricts fiduciary choice by prohibiting certain types of investments that a fiduciary might otherwise select as a QDIA, even though such investments would otherwise be selected in accordance with protective QDIA criteria and the fiduciary's general duties of prudence and loyalty. We agree with the DOL's statement in the Proposal that if a fund "expressly considers climate change or other ESG factors, is financially prudent, and meets the protective standards set out in the Department's QDIA regulation. . .there appears to be no reason to foreclose plan fiduciaries from considering the fund as a QDIA."⁸

Examples of ESG Factors. We also welcome the Proposal's addition of illustrative examples of ESG factors that "a fiduciary may consider in the evaluation of an investment or investment course of action if material to the risk-return analysis. . ." ⁹ These examples will give plan fiduciaries greater confidence that they may take appropriate ESG factors into account when selecting plan investment options, hopefully reversing the chilling effect that the current version of the Financial Factors Rule has on some plan fiduciaries' behavior. As we noted in our 2020 comment letter, many ESG factors are material to a plan fiduciary's risk-return analysis, and investing in products that take appropriate ESG factors into account can be in the best interest of plan participants.

Proxy Voting Rule. We appreciate that the DOL is seeking to simplify the Proxy Voting Rule, including by eliminating the special recordkeeping requirements in the current version of the Rule, which may create a misconception for some plan fiduciaries that proxy voting is disfavored or carries greater fiduciary obligations than other fiduciary activities.¹⁰ We also applaud the DOL's efforts to "address uncertainties regarding aspects of the current regulation and its preamble discussion relating to the consideration of ESG issues" by fiduciaries when making "proxy voting decisions, and to provide further clarity that will help safeguard the interests of participants and beneficiaries. . ." ¹¹ If finalized as drafted, we believe the Proposal will give plan fiduciaries greater confidence when determining when and how to vote plan proxies in the best interest of plan participants, including with respect to ESG-related issues.

⁷ Letter from Amy M. O'Brien and Yves P. Denizé of TIAA to DOL re Financial Factors in Selecting Plan Investments (Jul. 30, 2020), *available at*: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00580.pdf>.

⁸ Proposal, 86 Fed. Reg. at 57279-57280.

⁹ *Id.* at 57277.

¹⁰ *Id.* at 57281.

¹¹ *Id.* at 57276.

III. We recommend the DOL clarify that pooled investment vehicles may rely on negative consent from existing investors for the managers' proxy voting policies.

In the Proposal, the DOL describes the obligations of an investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan.¹² The Proposal specifically provides the following:

“In the case of proxy voting, to the extent permitted by applicable law, the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan’s economic interest in the pooled investment vehicle. Such an investment manager may, however, develop an investment policy statement consistent with Title I of ERISA and this section, and require participating plans to accept the investment manager’s investment policy, including any proxy voting policy, before they are allowed to invest.”¹³

While we recognize that the Proposal does allow investment managers to “require participating plans to accept the investment manager’s investment policy, including any proxy voting policy, before they are allowed to invest,” we would note that some investment managers may not have obtained this consent from each of their participating plans before initial investments were made. To address this scenario, we would ask the DOL to explicitly confirm in the final rule that it will allow investment managers to obtain consent from participating plans by sending a written notice stating that plans will be deemed to have accepted the investment manager’s investment policy and proxy voting policy if they continue investing with the investment manager after receiving the notice.

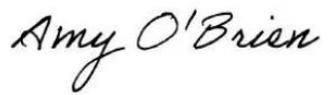
IV. Conclusion.

Once again, we commend the DOL on its thoughtful, collaborative approach to amending the Financial Factors Rule and the Proxy Voting Rule. We are pleased that the DOL has been responsive to so many of the concerns and comments that have been expressed by industry stakeholders over the past year, and we believe the Proposal benefits from the incorporation of this feedback. If finalized as drafted, the Proposal would give plan fiduciaries a much greater deal of confidence and clarity when they select plan investments that appropriately take ESG factors into account and consider voting proxies. We hope our comments above are helpful as the DOL works to finalize the proposed rule, and we welcome further engagement.

¹² *Id.* at 57303.

¹³ *Id.*

Sincerely,

Handwritten signature of Amy O'Brien in cursive script.

Amy M. O'Brien

Handwritten signature of Yves P. Denizé in cursive script.

Yves P. Denizé