



December 13, 2021

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655, U.S. Department of Labor
Washington, DC 20210

Attention: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights,
RIN [1210-AC03](#)

**350 Silicon Valley strongly supports the Proposed Rule,
Prudence and Loyalty in Selecting Plan Investments
and Exercising Shareholder Rights**

350 Silicon Valley, with more than 6,500 supporters in the San Francisco Bay Area and throughout the nation, respectfully submits this letter in strong support of the Employee Benefits Security Administration’s proposed revisions to 29 CFR 2550.404(a-d).

We believe that climate change poses an inescapable financial risk to investments and especially to the pension funds many Americans rely on for current and future retirement security. The previous administration’s rule tying the hands of fiduciaries, fund managers, and investors by discrediting environmental, social, and governance (ESG) factors as immaterial to investment security was an ill-timed attempt to shore up fossil fuel investments in spite of both market trends and the costly climate-related disasters unfolding around the world. The current proposed rule restores fiduciaries’ agency to make prudent investment decisions—and goes farther, as it calls out climate risk as its own category of risk, whereas before, climate was seen as a component of environmental risk. We believe that climate poses an exceptional and anomalous risk that must be evaluated on its own terms, and not as part of broader ESG analysis.

Specifically, we agree that climate change is indeed a “pecuniary risk,” and far from a “collateral consideration” for investors or fund managers.

We also strongly advocate for selection of well-performing low-carbon, low climate-related risk funds as qualified default investment alternatives (QDIAs). A participant’s or beneficiary’s objection to such a default would not be based on either science or an informed understanding of market performance.

For your information, we note the definition of “climate-related financial risk” in California’s Senate Bill 964 of 2018, codified in Government Code Chapter 731, Section 7510.5:

“Climate-related financial risk” means risk that may include material financial risk posed to the fund by the effects of the changing climate, such as intense storms, rising sea levels, higher global temperatures, economic damages from carbon emissions, and other financial and transition risks due to public policies to address climate change, shifting consumer attitudes, changing economics of traditional carbon-intensive industries.

Retirement savings must be protected from climate-related financial risk

Managers of retirement plans must be free to evaluate *all* factors that impact plan investments. Climate related disasters are increasingly frequent; we need only note the catastrophic tornadoes that flattened swaths of seven states in the past 24 hours. As society, and government, respond to the climate crisis, new regulations and changes in consumer demand will create significant market and investment [opportunities](#) as well as risks. Fiduciaries must gain the skills necessary to stay abreast of these inevitable changes in the markets, which are especially relevant to retirement funds covered by ERISA and the public funds that closely watch ERISA laws.

Fiduciary duty of pension fund boards and investors encompasses both the duty of prudence and the duty of loyalty to plan participants and beneficiaries—which means that evaluation of climate risk is inherent to the task of managing retirement funds. Climate risk includes the variables comprising the Social Cost of Carbon (soon to be updated by the Biden Administration) and market responses when that cost is taken into account; litigation on the part of states and municipalities to recover costs for current and future physical damage caused by fossil fuel companies, or penalties due to the companies’ successful efforts to defraud the public; costs associated with regulation of greenhouse gas emitters and emissions, including international agreements to curb fossil fuel use and legislated actions required to mitigate harms and adapt to changes caused by fossil fuel operations.

Climate science is now unequivocal that fossil fuel use must be swiftly decreased—an eventuality that will result in stranded assets and greatly diminished value of fossil fuel companies. Adding to the future price pressure, coal, oil, and gas are currently priced unrealistically low due to the failure to account for externalities: the costs arising from carbon in the atmosphere and the public health costs associated with fossil fuel-related pollution. As the risks become more obvious, more externalized costs are likely to be priced in. As fossil fuel prices rise (and renewables continue their downward price trend), demand for fossil fuel energy will decrease, further imperiling profitability of fossil fuel firms.

And as ever, attempts to time the market, i.e., waiting to wring the last drops of acceptable returns out of fossil fuel-related investments before acting on climate-related financial risk, are likely to prove fool’s errands. The more fiduciaries know about climate-related financial risk and the better they understand it, the better-equipped they will be to protect the investments they steward from this risk—and from the risk that plan participants and beneficiaries will sue fund management because they held risky investments too long.

The proposed revised rule will have many benefits for all parties: fund participants and beneficiaries, fund managers, and fiduciaries. By effectively rescinding the current rule’s prohibition on consideration of climate-related financial risk or collateral benefits of investments, the proposed rule will ensure that all parties will act on material climate risks. Further, by ensuring that plans will not forego investment returns or take on additional

investment risk to promote unrelated goals, this proposal will lead to increased investment returns over the long term—which is, indeed, the mission of ERISA-governed funds.

It is now clear that climate change poses an existential challenge to our very livelihoods. But if we can embrace the changes required to meet this challenge, the US economy has tremendous potential to grow, creating jobs and wealth. The proposed rule clears the way for ERISA plans to provide access to these investment opportunities. It is consistent with Department policy that has served American workers well in the nearly 50 years since ERISA became law.

We at 350 Silicon Valley appreciate the Department’s hard work in drafting this timely and thoughtful proposed rule, and we compliment staff for their thoroughness.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Cox". The signature is fluid and cursive, with the first name "Janet" being more prominent than the last name "Cox".

Janet Cox
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