PUBLIC SUBMISSION

Received: July 18, 2020
Status: Pending_Post
Tracking No. 1k4-9hvr-hez0
Comments Due: July 30, 2020
Submission Type: Web

Docket: EBSA-2020-0004
Financial Factors in Selecting Plan Investments

Comment On: EBSA-2020-0004-0002
Financial Factors in Selecting Plan Investments

Document: EBSA-2020-0004-DRAFT-0223
Comment on FR Doc # 2020-13705

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General Comment

I write to provide comments in response to the Department of Labor's proposed rule, "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposal").
The Department of Labor fails to articulate a rational connection between the relevant facts and the proposed rule. The Proposal reveals a fundamental misunderstanding of how professional investment managers use environmental, social and governance (ESG) criteria as an additional level of due diligence and analysis in the portfolio construction process. Investment managers increasingly analyze ESG factors precisely because they view these factors as material to financial performance.
A. The proposed rule assumes ESG strategies sacrifice financial returns, but current research findings show ESG strategies' outperformance (cite data on ESG performance)
B. The proposed rule assumes ESG considerations are not widely applied, but there is a history of effective use of material ESG considerations by mainstream investors (cite data on widespread use of ESG considerations by mainstream investors)
C. The proposed rule assumes ESG considerations are not material, but the Sustainability Accounting Standards Board standards adoption process is based on financial materiality legal standard (cite data on SASB standards)
D. The proposed rule assumes ESG considerations could violate fiduciary duty, but other jurisdictions' regulatory interpretations support prudent investor consideration of ESG factors as material and within fiduciary duty (cite data on other jurisdictions' regulations)
E. The proposed rule assumes that ESG considerations are not material to corporate success, but the Business Roundtable Statement on Corporate Purpose demonstrates broad issuer acceptance

of materiality as integral to corporate long-term success (cite data on Business Roundtable Statement)

The Proposal is likely to have the perverse effect of dissuading fiduciaries, even against their better judgment, from offering options for their plans that consider ESG factors as part of the evaluation of material financial criteria. As a result, it will unfairly, and harmfully, limit plan diversification and perhaps compel plan participants to choose options that are either more risky or less profitable.

I respectfully request that the Proposal be withdrawn. Thank you for your consideration of these comments.