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Office of Regulations and Interpretations US Department of Labor
Room N-5655
200 Constitution Avenue NW Washington, DC 20210

RE: Proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

To Whom It May Concern:

I write to express my concern regarding the Department of Labor's proposed rule restricting the financial factors considered in investment selection (RIN 1210-AB95) (the "Proposed Rule").

I am a student at Harvard Law School with experience in impact finance and investments in both the legal and nonprofit spheres. My retirement plan (from work prior to law school) includes investments chosen based on environmental, social and governance ("ESG") factors. I am concerned that the Proposed Rule will endanger the retirement security, stability, and long-term returns of ERISA participants by disallowing consideration of ESG factors.

**A. The Proposed Rule suggests that ESG strategies sacrifice financial returns, but data show the opposite: that ESG strategies have led to higher returns.**

The Proposed Rule fails to offer evidence supporting its assumption that ESG strategies may lead ERISA plan fiduciaries to choose investments that sacrifice financial outcomes. The International Monetary Fund's recent Global Financial Stability Report finds that funds incorporating ESG criteria perform comparably to traditional equity funds.[1] Experts ranging from Morningstar to the Financial Times confirm that—far from sacrificing returns—ESG investments have outperformed the market in recent years.[2]

The success of ESG funds is not limited to the past decade. In an eight-year study from 1993-2001, Harvard Business School researchers found that 90 companies with strong sustainability policies outperformed a similar group of 90 companies who lacked such policies, resulting in an average 4.8 percent higher return.[3] Similarly, a study of over 200 sources by Oxford University researchers confirmed that research

[1] Global Financial Stability Report: Lower for Longer, International Monetary Fund, October 2019, https://www.imf.org/en/Publications/GFSR/Issues/2019/10/01/global-financial-stability-report-october-2019.
[2] "U.S. ESG Funds Outperformed Conventional Funds in 2019," Morningstar, April 2020, https://www.morningstar.com/articles/973590/us-esg-funds-outperformed-conventional-funds-in-2019; "Majority of ESG funds outperform wider market over 10 years," Financial Times, June 2020, https://www.ft.com/content/733ee6ff-446e-4f8b-86b2-19ef42da3824.
[3] "The Impact of Corporate Sustainability on Organizational Processes and Performance", Harvard Business School, July 2013, https://www.hbs.edu/faculty/Publication%20Files/SSRN-id1964011_6791edac-7daa-4603-a220-4a0c6c7a3f7a.pdf.

overwhelmingly shows better operational performance and cashflows (88% of sources) and positive effects on investment performance (80% of sources) among companies with strong sustainability practices. [4]

The COVID-19 pandemic has only amplified the benefits of ESG funds compared to traditional equity funds.[5] Traditional investments, such as oil, have fallen precipitously, while investors who incorporate ESG considerations such as avoiding fossil fuels (myself included) have been rewarded with more stability. Even before the current economic crisis, Morgan Stanley noted that ESG investments demonstrate lower downside risk and cited "strong statistical evidence that sustainable funds are more stable" during periods of extreme volatility.[6]

B. **The proposed rule assumes that ESG considerations are not widely applied, but mainstream investors have historically used material ESG considerations with success.**

The Proposed Rule reveals a fundamental misunderstanding of professional investment managers' approach to ESG considerations. Investment managers increasingly analyze ESG factors because of their bearing on risk, return and fiduciary duties. 73 percent of investors surveyed by the CFA Institute in 2015 responded that they take ESG issues into account when analyzing and deciding upon investments.[7] From 2016-2018, financial markets saw a 38 percent increase in professionally managed assets that incorporate ESG criteria.[8] FTSE Russell found that the majority of global asset owners consider or have implemented ESG factors in their investment strategy. [9]

The salience of ESG considerations is no longer a niche concern but deeply ingrained in modern mainstream thinking around corporate success. The Business Roundtable released a statement on corporate purpose that emphasizes the centrality of external issues – environmental impacts, treatment of workers, stability in communities in which businesses operate – to corporate success.[10] Erecting more hurdles to the incorporation of ESG criteria will have a chilling effect, causing plans to drop ESG options and disregard these material considerations.

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[4] "From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance", Gordon L. Clark, Andreas Feiner, Michael Viehs, March 2015, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508281.

[5] "Sustainable Funds Weather the First Quarter Better Than Conventional Funds", Morningstar, April 2020, https://www.morningstar.com/articles/976361/sustainable-funds-endure-the-first-quarter-better-than-conventional-funds.

[6] Sustainable Reality, Morgan Stanley Institute for Sustainable Investing, 2019, https://www.morganstanley.com/pub/content/dam/msdotcom/ideas/sustainable-investing-offers-financial-performance-lowered-risk/Sustainable_Reality_Analyzing_Risk_and_Returns_of_Sustainable_Funds.pdf.

[7] "CFA Institute Survey: How do ESG Issues Factor into Investment Decisions?", CFA Institute, August 2015, https://blogs.cfainstitute.org/marketintegrity/2015/08/17/cfa-institute-survey-how-do-esg-issues-factor-into-investment-decisions/.

[8] "US SIF Releases Statement On Department Of Labor Rulemaking Related To ERISA And ESG Considerations," The Forum for Sustainable and Responsible Investment, June 2020, https://www.ussif.org/blog_home.asp?Display=141.

[9] "Smart beta: 2018 global survey findings from asset owners," FTSE Russell, 2018 https://investmentnews.co.nz/wp-content/uploads/Smartbeta18.pdf/.

[10] Statement on the Purpose of a Corporation, Business Roundtable, August 2019, https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

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 participants' choices, as well as compel plans to offer more volatile, less profitable options.

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

Sincerely,

Sarah Tansey
JD Candidate, Harvard Law School