PUBLIC SUBMISSION

Received: July 27, 2020
Tracking No. 1k4-9i1q-6h36
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-0438
Comment on FR Doc # 2020-13705

Submitter Information

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General Comment

We are writing in opposition to the proposed Department of Labor ruling, RIN 1210-AB95 regarding environmental, social, and governance (ESG) investing in defined contribution plans.

Veritable Vegetable is a mission-driven, certified B Corporation, and has sponsored socially responsible funds in its 401k plans since 1995.

We wholeheartedly agree with the thirteen (13) U.S. Senators who have written that "... plan sponsors and fiduciaries should be able to consider whether or not companies have established diverse leadership teams, whether they foster inclusive or discriminatory workplaces, and whether they engage in a variety of other practices that may impact a company's performance. ESG-based investing is a key way to grow a plan's assets in a manner consistent with its corporate principles without sacrificing investment returns. Racial justice, corporate diversity and other ESG factors are increasingly a consideration in investment decisions. Further, contrary to the skepticism and assumptions underlying the Department's proposed rule, ESG investments often outperform traditional investments and the overall financial markets, including over the past several years, showing investors can both achieve strong returns while driving positive change."

We also agree with our 401k advisor, Timothy Yee of Green Retirement Inc., who has expressed the following:

1. There is demand for ESG investments amongst plan sponsors and plan participants

(https://bit.ly/2ORrUOr and https://nyti.ms/2noKgMe).
2. This proposed ruling, as written, could reduce the number of ESG investment options or even eliminate ESG investments within the 401k altogether. This proposed ruling is anti-free-market.
3. ESG analysis is a generally accepted principle in portfolio analysis. It can help in the selection of investments and the avoidance of risk. The insurance industry is certainly using this to identify risks to its bottom line from climate change (https://bit.ly/39oZ69u)
4. ERISA explicitly avoids stating what type of investments may be used in a plan aside from the fact that the plan must offer at least three investment options that are diversified and have materially different risk and return characteristics (https://www.law.cornell.edu/cfr/text/26/1.401(a)(35)-1). This proposed ruling seeks to dictate what types of investments a plan may offer and curtails the plan sponsor's right to choose.
5. ESG investing is one way mission aligned companies such as ours, seek to amplify their beliefs. Should a church be required to invest its ERISA 403b plan in contradiction to its teachings?
6. There are any number of studies as well as actual investments that show the long-term outperformance of ESG funds over their traditional counterparts. One study from Morningstar - https://bit.ly/3eZUc3W - examined the outperformance of 745 Europe-based sustainable funds over their traditional counterparts. Does the US really want to lag in comparison to what Europe is doing?

The proposed ruling correctly emphasizes the need to focus on returns so that Americans can retire with dignity. Why would it then seek to eliminate a type of investment that can reduce performance risk? For example, it is possible that ESG screening might have kept British Petroleum and Royal Dutch Shell out of portfolios. Their recent write-down (https://on.wsj.com/32S56GM and https://bit.ly/3fbExQ7) has resulted in their stock prices dipping (BP, -43% off the 52 week high as of today's closing, Shell, -49%, same time period). How does negative performance help Americans retire with dignity?

As plan sponsors, we have a duty to act in the best long-term interests of our Veritable Vegetable employees. We believe that ESG factors are both morally and financially material and integrating ESG factors is core to investment decision-making. We urge you to immediately withdraw this proposed rule.