Michael T. Fahey

Darien, CT

July 27, 2020

Mr. Jason DeWitt
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

RE: RIN 1210-AB95 | EBSA, Department of Labor

Mr. DeWitt:

In this proposed rule, the Purpose of Regulatory Action section states, "Courts have interpreted the exclusive purpose rule of ERISA section 404(a)(1)(A) to require fiduciaries to act with 'complete and undivided loyalty to the beneficiaries'". Unfortunately, today there are many pension plan managers who wish to impose their personal beliefs on their investment decisions. Given that these beliefs are not always loyal to pension beneficiaries' economic interests, I believe this additional oversight from the Department of Labor is needed. I, therefore, enthusiastically support this rulemaking, "Financial Factors in Selecting Plan Investments", and its intention to codify the appropriateness of environmental, social, and governance (ESG) investing for pension funds.

An attorney by training, I have served as general counsel for both domestic and international companies. Additionally, my work consistently focuses on the rapid speed of information sharing, as well as demystifying complex disclosures. In the best-case scenario, ESG funds create a well-intended but nonetheless inevitable and inherent conflict of interest between stakeholders. Sadly, in the worst-case scenario, an asset manager's ESG "strategy" can be little more than a marketing tool and ploy for generating higher fees. These managers can charge a significantly higher fee for ESG funds relative to the standard index funds they offer. This constitutes divided loyalty between the manager's compensation and their client's retirement savings that they are entrusted to protect and grow. According to Morningstar data compiled by the Institute for Pension Fund Integrity (IPFI), for example, BlackRock charges 40 percent more in fees for its iShares Global Clean Energy ETF compared to its iShares Core S&P 500 ETF. The Department surely has cause to provide further guidance regarding this conflict of interest.

Additionally, while I believe any individual should be able invest in an ESG fund or pursue a variety of sustainable investing strategies, these types of investments are hard to define and rigorously evaluate. Because of this, there is an extraordinary bar for pension funds to meet for these types of investments. Alicia Munnell, director of Boston College's Center for Retirement Research and a former Clinton Administration official, has made this case. In her paper, "New Developments in Social Investing by Public Pensions", she writes, "While social investing raises complex issues, public pension funds are not suited for this activity. The effectiveness of social investing is limited, and it distracts plan sponsors from the primary purpose of pension funds – providing retirement security for their employment."

This proposed rule provides for substantial regulatory improvements that will protect the retirement security of pensioners nationwide. Thank you, Mr. DeWitt, for the effort you, the EBSA, and your staff have put forth to date.

Sincerely,

M. Fahey

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Cc: Jeffrey Turner, Deputy Director, EBSA, U.S. Department of Labor