AssuredPartners
EARLY, CASSIDY & SCHILLING

Paul J. Phelan, CFP® | Practice Leader and Principal | Employee and Executive Benefits
Early, Cassidy & Schilling, LLC | www.ecsinsure.com
15200 Omega Drive, Suite 100, Rockville, MD 20850
(D):240-864-9117 | (M):202-669-3369 | (F):240-864-8117
(E):phelanpj@ecsinsure.com

July 28, 2020

Mr. Jeffrey Turner
Deputy Director, Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Frances Perkins Building, Room N-5655
Washington, DC 20210

Re: File Number RIN 1210-AB95, Financial Factors in Selecting Plan Investments

Dear Mr. Turner:

I appreciate this opportunity to offer my comments on this Proposed Rule.[1] ESG investing – an emerging and often inherently conflicted investment strategy – deserves new and additional scrutiny regarding pension plans regulated under the Employee Retirement Income Security Act (ERISA) of 1974. For far too long, pension plan fiduciaries have been able to instill in their investment decisions social, cultural, and other non-pecuniary considerations. The Department of Labor's efforts, therefore, are very much needed to ensure these managers are held accountable for the investment decisions they make on behalf of pension plan participants.

The chorus of voices, which is surely discordant, advocating for non-economic considerations in investing continues to swell. As such, I fully support greater oversight of pension fiduciaries in the burgeoning ESG ecosystem. The Hon. Jason Isaac, distinguished fellow at the Texas Public Policy Foundation, sums up perfectly the issue at hand in a column this week. He writes:

> "There's a growing trend in the financial community, driven by boisterous public shaming campaigns, towards environmental, social, and governance (ESG) investing — meaning giving more funds to companies who talk the right talk on issues like climate change, instead of to companies that offer the highest return on investment. The ESG movement wrongly bullies corporations into ignoring their duty to provide profitability for shareholders, in order to appease a vocal minority of progressive activists."[2]

As Mr. Isaac alludes to, with little more than "do good" feelings to substantiate their investing decisions, pension plan managers and companies who sponsor such plans are simply advocating

[1] U.S. Department of Labor, EBSA, Proposed Rule, "Financial Factors in Selecting Plan Investments", July 2020, accessed at: https://www.regulations.gov/document?D=EBSA-2020-0004-0002.
[2] Jason Isaac, "'Socially Conscious' Energy Investing Will Hurt in the Long Run", RealClearEnergy, July 26, 2020, accessed at: https://bit.ly/3f3J9XM.

ideological agendas. This is dangerous for long-term results and certainly puts retirement plans in harm's way. By law, pension fiduciaries must be solely focused on maximizing the returns on the money pension participants entrust to them. Thankfully, the Department can further protect pensioners by finalizing this Proposed Rule.

The theme of ESG investments was also raised in the Securities and Exchange Commission's (SEC) newly finalized rule on proxy voting advice. This Department of Labor rulemaking would, in conjunction with the SEC's rule, be another important step in reigning in the perverse incentives embodied by ESG investing. In a comment letter to the SEC, I emphasized the practice of robo-voting and how it perpetuates non-pecuniary agendas, writing, "Robo-voting, the practice of institutions automatically relying on both proxy advisors' recommendations and in-house policies without evaluating the merits of the recommendations or the analysis underpinning them, further complicates the tendency of proxy advisors to suggest an ideological, non-financial vote. If an investment manager takes an ISS or Glass Lewis recommendation as is without any further due diligence, then his or her shareholders are certainly not being protected…"[3]

Having worked in employee and executive benefits and insurance for more than 20 years, my experience has allowed me to collaborate with companies large and small, as well as pension funds and investors. The Department's implementation of this proposed rule would help companies, investors, and retirement account holders of all stripes.

Thank you again for this opportunity and for your and your team's dedication to improving and strengthening retirement savings.

Sincerely,

Paul PHELAN

Paul J. Phelan
Senior Vice President
Practice Leader, Employee and Executive Benefits
AssuredPartners, Early, Cassidy & Schilling

Cc: The Honorable Eugene Scalia
Mr. Jason DeWitt

---

[3] Paul Phelan, SEC Comment Letter, January 22, 2020, accessed at: https://www.sec.gov/comments/s7-22-19/s72219-6682119-205438.pdf.