Jason A. DeWitt
Office of Regulations and Interpretations
Employee Benefits Security Administration

July 29, 2020

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

Dear Mr. DeWitt,

Thank you for the opportunity to comment on the Labor Department's rulemaking related to the "Investment duties" regulation under Title I of the Employee Retirement Income Security Act of 1974.

This is a timely and needed action. Financial security in retirement is elusive for many Americans. Employer-sponsored pensions have become rare. Many public pension programs are underfunded. And so while many workers have access to 401(k) and other retirement plans, they bear the responsibility of making informed choices so that their savings and investments can sustain them into old age.

These trends come at a time when stakeholder or shareholder activism is firmly established in the financial marketplace. Proponents of changes in public policy and corporate decision-making have been successful in convincing many investors to shift away from certain industries and instead support companies and industries associated with environmental, social and corporate governance goals, or ESG investment.

Many of the goals of ESG investing are worthy and have widespread support. At the same time, there is data indicating that these investments have lower returns compared to those untethered to public policy goals and corporate priorities and practices. This can undermine the fiduciary duty of investment managers to safeguard the financial well-being of plan participants. In addition, the mechanisms for advancing ESG investing could be susceptible to conflicts of interest and lack of transparency.

Accordingly, I support the Department of Labor's proposal to confirm that plan fiduciaries should make investment decisions based on solely on maximizing returns for investment plan participants.

First, the beneficiaries of a pension fund likely hold a wide range of views on business ethics and sustainability, but they all have one thing in common: they entrusted their retirement security to professionals. The market research firm Spectrem Group recently confirmed that sentiment, reporting that 91 percent of investors prefer maximizing returns over political/social objectives. Pension plan participants sign up for certainty and have the right to expect federal laws and regulations support this expectation. That is fundamental to ERISA.

Second, putting aside the aberrations in securities prices and forecasts caused by the coronavirus pandemic, there is ample data to demonstrate that ESG investing may sacrifice some financial returns. Earlier this year, a Bloomberg analysis looked at one of oldest and largest ESG index funds, the iShares MSCI USA ESG Select Social Index Fund, which holds 100 stocks with high ESG ratings. Interestingly, it has trailed the S&P 500 Index by 37 percentage points during the past 10 years.

The lag is due not to the companies in which it invests, but rather the companies in which it will not invest because of ESG guidelines. Their list includes some of the largest and most profitable companies in the world, such as Amazon, Netflix, and MasterCard, as well as energy companies such as Exxon Mobil and defense contractors like Lockheed Martin. It's pretty obvious that if retirement plan managers exclude companies like Amazon from the fund's portfolio, plan participants have a greater chance of seeing less growth in their retirement investments. This is the antithesis of fiduciary responsibility.

Individual investors and companies certainly have the right to embrace ESG investing policies and strategies. If they want to pick investments that track with their personal views, they should be free to pursue these options. On the other hand, fund managers entrusted with a retirement plan that covers thousands of workers with a range of political and social views should have a different calculus. They have a fiduciary obligation first and foremost to serve the financial interests of plan participants, especially as it applies to a default investment fund. For the millions of Americans who are preparing for retirement or relying on their retirement funds, it is more critical than ever to reinforce this principle.

I appreciate your consideration of my comments.

Sincerely,

Jeff Kupfer

Jeffrey Kupfer
Former special assistant to the president for economic policy
Adjunct professor of policy at Carnegie Mellon University's Heinz College