



Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655 U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

29 July 2020

Dear Director Canary

**Re: Financial Factors in Selecting Plan Investments Proposed Regulation (RIN 1210-AB95)**

On behalf of Border to Coast Pensions Partnership, thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled “Financial Factors in Selecting Plan Investments” (“Proposal”).

Border to Coast is an FCA-regulated asset manager, wholly owned by 11 local government pension schemes, who have c.£46bn in assets. As a long term, strategic investor it is essential that we consider all risks and opportunities in our investment approach. Integrating environmental, social and governance (ESG) factors into our analysis helps us identify broader risks, which leads to better informed investment decisions and improved risk-adjusted returns.

We are deeply concerned that the attempt to provide clarity for ERISA fiduciaries misconstrues ESG integration and could lead to confusion, dissuading fiduciaries from assessing ESG risks and opportunities in their investments. As such, it has the potential to increase investment risk and reduce potential investment returns. We therefore urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

**ESG Integration**

There is a substantial body of evidence that demonstrates ESG factors can be financially material, posing short, medium and long term financial risks and opportunities to companies and financial markets. This is the basis for our decision to integrate ESG factors into our investment decision making process.

A policy by the DOL clarifying that fiduciaries must integrate material factors into their investment decisions and that ESG factors may be material would be appropriate. We are concerned, however, that the remaining components of the proposal create confusion and could cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

**The “all else being equal test”**

Whilst proposing the retention of the “all things being equal” test the Proposal adds new administrative requirements for fiduciaries to demonstrate that it was appropriate to make the decision based on collateral benefits. There is a concern that fiduciaries would, therefore not take the opportunity to select between multiple investment options.



The test was originally developed to guide the consideration of economically targeted investing (ETIs). However, the language of the Proposal does not distinguish the application of this test from the broader discussion of ESG integration, causing confusion.

### **Defined contribution plan investment options**

We also believe that confusion exists in reference to the proposal that ERISA fiduciaries may select “ESG-themed funds” as an investment option for a participant-directed plan, but that an “ESG-themed fund” cannot be selected as the default investment option. This determination appears to be informed by confusion between ESG integration and ETIs. In our view, all investment options should be required to integrate ESG factors, as part of prudent investment decision-making

The Department’s stated rationale for prohibiting an “ESG-themed fund” from being selected as the default investment option is that it is not appropriate to select “investment funds whose objectives include non-pecuniary goals.” We believe that whilst the above definition could be applied to impact funds and funds that target very specific themes with narrow investment universes, it is not an appropriate label for funds pursuing ESG integration of financial material issues into the investment process, and without a mandate to pursue such non-pecuniary goals. Likewise, we believe further confusion is created given the language earlier in the proposal which states that “ESG factors and other similar factors may be economic considerations.”

We believe that the text of the Proposal is likely to cause confusion for ERISA fiduciaries, as it conflates ESG integration and economically targeted investing, and will lead to additional costs to plan savers. If the Proposal is finalised in its current form, we are concerned that fiduciaries will struggle to fulfil their obligations to integrate all financially material risk factors while also trying to respond to the language in the Proposal.

As a long-term responsible investor, we believe that the existing rules should be maintained and that the best course of action is to keep the existing guidance and not move forward with the proposed rule. If changing the guidance is deemed necessary we would strongly suggest to better define the different concepts: ESG integration, impact and ESG-themed funds to make sure that funds that integrate ESG to make better informed investment decisions and generate excellent investment returns are still eligible.

Thank you for the opportunity to provide comment on the proposal, and for considering this feedback.

Yours sincerely

A handwritten signature in black ink that reads "Rachel Elwell".

Rachel Elwell

CEO

Border to Coast Pensions Partnership Ltd