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Submitter Information

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General Comment

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655 U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Re: Financial Factors in Selecting Plan Investments Proposed Regulation (RIN 1210-AB95)

Dear Director Canary:
My comments are on the notice of proposed rulemaking entitled “Financial Factors in Selecting Plan Investments” (“Proposal”). I support using environmental, social, and governance (“ESG”) factors when making investment decisions as these fulfill fiduciary obligations to engage in appropriate risk management. I, therefore, urge you to retain existing guidance and not move forward with this Proposal.
The Proposed Rule states 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. In my view, all investment options should be required to integrate ESG factors as part of prudent investment decision-making. ESG issues can have a material impact on the financial performance of securities as well as sustainability of the markets for future investors. It is well established that the ongoing climate change is exacerbated and fueled by certain economic activities. Blindly closing one’s eyes to the impending perils of

continuing such activities without modifications to reduce climate impacts puts all investments in higher risks than they would be otherwise. In 2015 the Supreme Court confirmed that “a trustee has a continuing duty—separate and apart from the duty to exercise prudence in selecting investments at the outset—to monitor, and remove imprudent, trust investments.” Fund investors can create market volatility and undermine sustainable wealth creation when they fail to account for material ESG factors, undermining the interests of future beneficiaries.

The Proposal is likely to lead to confusion for ERISA fiduciaries and to costs to plan savers. If the Proposal is finalized in its current form, I am concerned that fiduciaries will struggle to fulfill their obligations to integrate all financially material risk factors while also trying to respond to the language in the Proposal that appears to be aimed at preventing fiduciaries from taking account of these same risks.

Institutional investors have a duty to act in the best, long-term interests of their beneficiaries. In this fiduciary role, I believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. If the Proposed Rule goes into effect, it will undermine fiduciaries’ ability to act in the long-term best interest of their beneficiaries. As such, I urge you to you to allow the existing guidance to remain in effect and not move forward with a final rule.

Respectfully,

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