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Submitter Information

Name: Anonymous Anonymous

General Comment

I write in support of proposed rule RIN 1210-AB95. I believe the proposed rule is necessary to protect the retirement security of millions of American workers.

The Department of Labor will be inundated with comment letters from a myriad of investment industry professionals – investment advisors; asset managers; plan sponsors; rating agencies; financial advisors; and the like. And I am certain the overwhelming majority of those comments will be in vehement opposition to the proposed rule. But consider this: for these industry professionals, retirement savings is a profit center.

On the other hand, I assume you will receive few comments from people like me, an average working American. The rule making process is too opaque and arcane, and our daily lives are too busy, to invite our ready participation in this process. But given how much we stand to benefit, I felt compelled to write in support of the rule.

I am your typical American worker. By the time I retire, I will have worked my entire adult life, over 45 years. I pay my taxes. I pay a mortgage; a car loan; grocery bills; medical expenses…I support a family. Once all the bills are paid, I try to save – for college; for a rainy day, in case one of us gets sick, or loses a job; for an occasional vacation; and for retirement. I know that Social Security will not be enough to support us in our senior years. And so I contribute to a 401k.

The uncertainty surrounding my financial security in my senior years scares me. That fear is justified. According to a study prepared by the Congressional Research Service - "Poverty Among Americans Aged 65 or Older" - the poverty rate among Americans 65 or older was nearly 10%. And without proper safeguards in place to protect our 401ks, that number could well increase.

While I put my money in a 401k, I do not control how that money gets invested. That falls to a bevy of paid professionals. But we - the beneficiaries - do not have a seat at the table when the investment decisions get made. So how do we know those decisions are being made in our best interest? ERISA requires that those making these investment decisions act as our fiduciaries. As fiduciaries, they owe us duties of trust, loyalty, honesty, and good faith. They are to act solely in our interest and for the exclusive purpose of providing benefits. And they must studiously avoid self-dealing and conflicts of interest.

Which brings us to the proposed rule. There seems to be wide-spread agreement that the proposed rule is largely confirmatory of prior DOL guidance. So why the industry opposition to this rule? These fiduciaries will decry the "oppressive" costs imposed by the rule. They will claim that technicalities in the rule making process itself prohibit the rule’s implementations. Others will claim - without irony - that they are concerned the proposed rule will have a negative effect on returns (if ESG investing provides better returns, this rule should pose no concern to fiduciaries).

To know the true reason for the industry opposition one need only follow the money. Fiduciaries will oppose any rule that may impose additional costs on them, however modest. It directly impacts their bottom line. They are like the proverbial fox guarding the hen house, only now the fox is complaining about the cost of the chicken wire.

Investment advisors and rating agencies also see ESG investing as an avenue to extract increased fees, and profits. Their opposition to a rule that may temper that future revenue stream is reflexive. But one wonders how fiduciaries avoid self-dealing and conflicts of interest when ESG investing may allow them to collect increased fees. A rule that requires some limited documentation of their decision-making process should be welcomed in the name of transparency. In fact, if fiduciaries are fulfilling their obligations, and making investment decisions that are in the best financial interest of beneficiaries, then they should welcome the documentation requirement. The documentation would evidence their good faith in the face of any contrary allegations.

I also want to briefly comment on the letter the Department received from a group of thirteen Senators in opposition to the rule. I found their position striking, since these Senators speak so frequently in support of “working Americans.” What could be more important to working Americans than protecting our retirement savings. Yet in their letter, the Senators wrote that the proposed rule “would undermine a powerful tool that leverages trillions of dollars a year to drive positive social change…” A tool to drive social change. My retirement savings is NOT a tool to drive social change. It’s a tool to provide me financial security when I will need it most. While the goals of ESG investing may be laudable, the decision to use my money to advance those goals should be mine.

I strongly urge the Department to implement this proposed rule to protect the retirement security of millions of Americans.