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Submitter Information

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General Comment

I am writing in opposition to the proposed Department of Labor ruling, RIN 1210-AB95 regarding environmental, social, and governance (ESG) investing in defined contribution plans. I have been in the financial services industry for over 30 years and serve as a 401k advisor and base my opposition on that experience.

1. There is demand for ESG investments amongst plan sponsors and plan participants (https://bit.ly/2ORrUOr and https://nyti.ms/2noKgMe).

2. This proposed ruling, as written, could reduce the number of ESG investment options or even eliminate ESG investments within the 401k altogether. This proposed ruling is anti-free-market. How un-American is that?
3. ESG analysis is a generally accepted principle in portfolio analysis. It can help in the selection of investments and the avoidance of risk. The insurance industry is certainly using this to identify risks to its bottom line from climate change (https://bit.ly/39oZ69u)

4. ERISA explicitly avoids stating what type of investments may be used in a plan aside from the fact that the plan must offer at least three investment options that are diversified and have materially different risk and return characteristics (https://www.law.cornell.edu/cfr/text/26/1.401(a)(35)-1). This proposed ruling seeks to dictate what types of investments a plan may offer and curtails the plan sponsor's right to choose.

5. ESG investing is one way mission aligned companies, non-profits, and religious organizations

seek to amplify their beliefs. Should a church be required to invest its ERISA 403b plan in contradiction to its teachings?

6. There are any number of studies as well as actual investments that show the long-term outperformance of ESG funds over their traditional counterparts. In 2015, the Journal of Sustainable Finance and Investment reviewed the primary and secondary data of previous academic review studies, combining the findings of roughly 2200 individual studies. The results show that "...the business case for ESG investing is empirically very well founded. Roughly 90% of studies find a nonnegative ESG-[Corporate Financial Performance] relation." ("ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies," Journal of Sustainable Finance and Investment, 2015.)

7. In a related but different vein, one study from Morningstar - https://bit.ly/3eZUc3W - examined the outperformance of 745 Europe-based sustainable funds over their traditional counterparts. Does the US really want to lag in comparison to what Europe is doing?

8. The proposed ruling correctly emphasizes the need to focus on returns so that Americans can retire with dignity. Why would it then seek to eliminate a type of investment that can reduce performance risk? For example, it is possible that ESG screening might have kept British Petroleum and Royal Dutch Shell out of portfolios. Their recent write-down (https://on.wsj.com/32S56GM and https://bit.ly/3fbExQ7) has resulted in their stock prices dipping (BP, -43% off the 52 week high as of today's closing, Shell, -49%, same time period). How does negative performance help Americans retire with dignity?

The proposed rule as written comes as anti-free-market/ anti-American. It also seems to show a possible lack of understanding how ESG criteria and investments can help Americans retire with dignity.

Sincerely,

Timothy R. Yee, President
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