# PUBLIC SUBMISSION

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## Submitter Information

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## General Comment

Office of Regulations and Interpretations
Employee Benefits Security Admin.
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:

Thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" ("Proposal" or "NPR"). As a former investment banker, co-founder of an investment advisory company and personal investor for the past 30 years, I believe that integrating environmental, social, and governance (ESG) factors into investment activities is essential to fulfilling fiduciary obligations to engage in appropriate risk management. I believe that the Proposed Rule fundamentally misconstrues the importance and role of ESG integration in reducing risk and increasing returns. I urge you to retain existing guidance.

Despite the Proposed Rule's stated goal of providing clarity for ERISA fiduciaries, it instead creates confusion due in part to a failure to distinguish ESG integration and Economically Targeted Investing (ETI). ESG integration is the consideration of risk factors as part of prudent fiduciary management and a strategy that takes these factors into account in investment actions. ETIs are investments that aim to provide financial returns as well as collateral, non-financial benefits. ETIs often advertise job creation or climate impact as goals of the investment. [1]

The Proposed Rule states that ERISA fiduciaries have fulfilled their obligations if they have "selected investments and/or investment courses of action based solely on pecuniary factors" and that "ESG factors and other similar factors may be economic considerations." There is now an extensive body of research that makes clear that ESG factors are material investment considerations. As such there exists a sound basis for integrating ESG factors into investment actions.
A policy by the DOL that simply clarifies that fiduciaries must integrate material factors into their investment actions, and that ESG factors may be material, would be appropriate. We are concerned, however, that the remaining components of the proposal create confusion and are likely to cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

I am concerned that the Proposed Rule creates new burdens for fiduciaries under the "all else being equal test" that will lead to unnecessary costs for plan participants. It creates confusion about what activities the DOL is attempting to regulate. Under the "all else..test," in place since 1994, fiduciaries may select an investment that provides collateral benefits only after they have determined that the risk and return profile of that investment option is substantially similar to that of competing options that would meet the financial needs of the fund. The Proposed Rule proposes the retention of the "all things..equal" test but adds new costly record keeping requirements for fiduciaries to document their conclusion that multiple options are equal and that it is appropriate to make a decision based on collateral benefits. Funds that integrate ESG factors into their plans largely outperform their traditional counterparts, indicating that ESG factors can indeed be a material rather than non-pecuniary factor.

Out of the 24 instances of comparison between traditional ETFs and their fossil-free ESG counterparts, ESG ETFs outperformed traditional ETFs 21 out of 24 times. Not only do the ESG funds outperform their counterparts, they foster societal benefits, creating a win-win scenario for investors who are interested in investing their values with ESG.

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, investment options should be required to integrate ESG factors as part of prudent investment decision-making. It may be appropriate for ERISA fiduciaries to offer ETIs as options that participants may select in participant-directed plans. ESG issues can have a material impact on the financial performance of securities and sustainability of the markets for future investors. In 2015 the Supreme Court confirmed that "a trustee has a continuing dutyseparate and apart from the duty to exercise prudence in selecting investments at the outsetto monitor, and remove imprudent, trust investments."

Institutional investors have a duty to act in the long-term interests of their beneficiaries. In this fiduciary role, we believe that ESG factors may be financially material and integrating ESG factors is core to investment decision-making. As such, we urge you to you to allow the existing guidance to remain in effect and not move forward with a final rule.

Arianna Van Meurs, UC Berkeley MBA, 1989