ACORE
AMERICAN COUNCIL ON RENEWABLE ENERGY

December 10, 2021

Via Electronic Submission

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

Re: RIN 1210-AC03, *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*

Dear Assistant Secretary Khawar,

The American Council on Renewable Energy ("ACORE") respectfully submits these comments concerning the October 14, 2021 proposed rule, *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights* ("proposed rule") from the U.S. Department of Labor Employee Benefits Security Administration ("department"), identifier RIN 1210-AC03. ACORE is a national nonprofit organization dedicated to advancing the renewable energy sector through market development, policy changes and financial innovation.[1] Our membership includes some of the nation's foremost institutional investors, renewable energy developers and manufacturers, technology companies and corporate energy offtakers.[2]

From its inception in 1974 through to 2019, the department's administration of the Employee Retirement Income Security Act ("ERISA") fostered an environment of prudent investment through regulations acknowledging that the department's own preferences should not be a substitute for the expertise of seasoned investment professionals, and that the private sector is best equipped to innovate and discover new investing methodologies to secure higher returns for plan participants. In fact, the private sector has assumed the leading role in proactively adjusting investment portfolio decisions using both pecuniary and non-pecuniary factors to meet their fiduciary responsibilities. This commonsense approach changed with two 2020 rules, *Financial Factors in Selecting Plan Investments* and *Financial Duties Regarding Proxy Voting and Shareholder Rights*, which sought to restrict the growing field of environmental, social and governance ("ESG") investing based on the erroneous assumption that ESG considerations are unrelated to financial performance. The proposed rule rights these wrongs, returning to investment professionals the responsibilities entrusted to them by plan participants including, but not limited to, selecting plan investments and exercising shareholder rights.

The proposed rule properly acknowledges that ESG considerations are related to financial performance. In practice, ESG investing is a generally accepted investment approach with a

[1] See https://acore.org/ for more information about ACORE.
[2] See https://acore.org/our-members/ for more information about ACORE's members.

proven track record, particularly where there is a strong dataset of sustainable investments. Prominent investors like BlackRock, State Street Advisors, Goldman Sachs, J.P. Morgan, Bank of America, and many others, increasingly take ESG considerations into account when making investment decisions. To underscore this issue, the Organization for Economic Co-Operation and Development reports that "firms with strong ratings on material sustainability issues have better future performance than firms with inferior ratings."[3]

By evaluating a broader spectrum of operating and financial risk, investments aligned with ESG principles are increasingly recognized as the best choice for realizing maximum long-term returns, generating better financial performance than non-ESG equivalents. According to a report by Morningstar,[4] global sustainable fund inflows and assets outpaced the market in 2021. Global sustainable fund assets increased by 8% in the third quarter of 2021 while the overall market remained stable. According to data from BloombergNEF,[5] the $97 billion of total net inflows of investment into ESG funds year-to-date already exceed the $76.7 billion net inflows from all of 2020. Specifically, the IShares ESG Aware MSCI USA ETF outperformed the U.S. S&P 500 index by five percentage points from the beginning of 2020 to the second quarter of 2021.[6] According to PwC's 2021 Global Investor ESG Survey,[7] a majority of investors (79%) indicate that a company's ESG risk management is an important investment consideration. Another analysis[8] of proxy voting behavior by institutional investors saw that there has been a significant increase in the past year in shareholder proposals focusing on the environment in the U.S. – 115 proposals in 2021 compared to 89 in 2020.[9]

The announcement is necessary to protect the interests of plan participants and beneficiaries. Under certain circumstances, climate risks increase and become material to investment decisions. For example, COPP26 emissions reduction targets are material to investment decisions if climate goals are to be met. ESG considerations are a form of risk mitigation and consequently affect risk-related economic costs. According to Morningstar, reducing a company's ESG-related risks can confer a long-term competitive advantage; they further enumerate financially material information on companies and industry identified previously as important for investment

[3] Boffo, R., and R. Patalano, "ESG Investing: Practices, Progress and Challenges", *OECD Paris*, (2020), Accessed December 1, 2021 at: www.oecd.org/finance/ESG-Investing-Practices-Progress-and-Challenges.pdf.
[4] "Global Sustainable Fund Flows: Q3 2021 in Review", *Morningstar*, (November 2021): 1, Accessed December 1, 2021 at: https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/Global-ESG-Q3-2021-Flows.pdf?utm_source=eloqua&utm_medium=email&utm_campaign=none&utm_content=27223
[5] BNEF Sustainability Team, "Sustainability Indicators: October 2021", BloombergNEF, (2021): 13, Accessed December 1, 2021 at: https://www.bnef.com/insights/27685/view
[6] Maia Godemer, "2H 2021 Sustainable Finance Market Outlook", *BloombergNEF*, (2021): 8, Accessed December 1, 2021 at: https://www.bnef.com/insights/26925/view
[7] Mark Segal, "PwC Investor Survey: ESG Integration Goes Mainstream, Single ESG Reporting Standard Wanted", *ESG Today*, October 28, 2021, Accessed December 1, 2021 at: https://www.esgtoday.com/pwc-investor-survey-esg-integration-goes-mainstream-in-investment-process-single-esg-reporting-standard-wanted/
[8] Dan Konigsburg, Sharon Thorne, and Stephen Cahill, "Investor Behavior in the 2021 Proxy Season", Harvard Law School Forum on Corporate Governance, Accessed December 1, 2021 at: https://corpgov.law.harvard.edu/2021/11/10/investor-behavior-in-the-2021-proxy-season/
[9] Dan Konigsburg, Sharon Thorne, and Stephen Cahill, , "Investor Behavior in the 2021 Proxy Season", Harvard Law School Forum on Corporate Governance, Accessed December 1, 2021 at: https://corpgov.law.harvard.edu/2021/11/10/investor-behavior-in-the-2021-proxy-season/

decisions.[10] Conversely, neglecting ESG-related risk can impact a company's competitive advantages and diminish long-term economic gains. For example, when a resource-intensive company does not invest in safety systems and infrastructure, it can increase its exposure to far costlier environmental liabilities. Neglecting climate and environmental risks, such as those arising from oil and gas exploration and production, coal ash disposal or nuclear safety, can result in the creation of stranded assets, negatively affecting a company's balance sheet or reducing dividends. Disregarding social and governance risks, such as a lack of transparency with customers or stakeholders, can lead to expensive litigation and a loss of sales.

The department should further enhance the proposed rule by clarifying that ERISA's fiduciary duties require qualified investment professionals to vote in favor of proxies that better align holdings with ESG metrics when they prudently determine that doing so is in the economic interest of plan participants and beneficiaries. Investors naturally consider ESG factors when evaluating shareholder opportunities, including proxy votes. For example, when leading tractor-trailer truck manufacturer PACCAR Inc. announced its adoption of science-based emissions reduction targets, investors clearly understood that those targets would have a material impact on their sales volume and on which trucks they would sell in response to changes in public policy and consumer interest.[11] Similarly, Starbucks'[12] commitment to reducing waste has a material impact on the products they need to purchase for their inventory, altering business costs.

The proposed rule will reduce confusion and mitigate the regulatory burden on ERISA fiduciaries. That fiduciaries are using more information to exercise better corporate oversight is a positive development for plan participants and beneficiaries. According to an MSCI research report,[13] ESG factors have financially material impacts on stock price performance and profitability for companies over multiple time periods. Banks such as ING and BNP Paribas invest in sustainable finance projects due to the benefits of decreased loan prices and interest rates and increased access to financing, return on sales, sales growth, return on assets and return on equity.[14] Further, ESG-focused companies have witnessed increased returns along with enhanced earnings growth and dividends based on MSCI reporting.

The proposed rule increases America's global competitiveness by limiting the ability of foreign investors to earn comparatively higher returns. Environmental policy and sustainable growth initiatives at a country-level are increasingly being influenced by the UN's Sustainable Development Goals.[15] The new International Sustainability Standards Board will put sustainability reporting on a similar level as financial reporting through the development of

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[10] Travis Miller, Tancrede Fulop, and Seth Sherwood, "ESG Risk Comes Into Focus: Companies focus on their ESG Risks to Build Profitability for the Long Term", *MorningStar*, (2019), Accessed December 1, 2021 at: https://www.morningstar.com/features/esg-risk

[11] PACCAR Inc., "PACCAR TCFD Report 2021", Accessed December 1, 2021 at: paccar-tcfd-report-march-2021.pdf.

[12] "Becoming Resource Positive", Starbucks, last modified December 1, 2021 at https://www.starbucks.com/responsibility/planet

[13] Refinitiv/Lipper and MSCI ESG Research, LLC, "Fact Check: The Truth 5 ESG Myths", Accessed December 1, 2021 at: https://www.msci.com/documents/1296102/24586308/Fact-Check-The-Truth-Behind-5-ESG-Myths.pdf/0938912a-1089-2b4e-57ea-80dd3b9a1215

[14] Global Association of Risk Professionals Home Page, GARB, Accessed December 1, 2021 at: https://www.garp.org/#!/risk-intelligence/culture-governance/erm/a1Z1W000003lwfzUAA

[15] "Post-2015 Development Agenda", Sustainable Development Goals Knowledge Platform, United Nations, last modified December 1, 2021 at: https://sustainabledevelopment.un.org/post2015

global sustainability disclosure standards that national and regional jurisdictions will use to mandate ESG information.[16] Corporations operating at a global level adhere to investment principals that include ESG standards based on collected sustainability data. By default, U.S. operating companies collect data regarding ESG activities and incorporate sustainability factors when investments are considered.

Any potential costs created by the proposed rule are de minimis. The investment community is currently collecting ESG data and working to enhance the validity of this data independent of the rulemaking processes. Identified previously, the investment community applies ESG metrics and is leading the policy discussion on environmental disclosure as a fiduciary responsibility. The proposed rule would also eliminate specific documentation requirements added under the 2020 final rule that had, in fact, created a burden for investors that considered ESG factors.

To best protect plan participants and beneficiaries, the department should swiftly finalize the proposed rule. We are at an important moment in history, and the fiduciary community considers climate change and other ESG factors, including governance and workforce factors, when selecting investments and exercising shareholder rights. This information fundamentally impacts how investment decisions are being made and how investment funds perform over time. The department should allow fiduciaries to incorporate ESG data and consider collateral benefits when plan investments are made for the benefit of employees impacted by ERISA.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact ACORE's Vice President of Policy, Allison Nyholm, at nyholm@acore.org or (202) 777-7588 with any additional questions you may have.

Sincerely,

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/s/ *Maheen Ahmad*
Maheen Ahmad
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[16] "New sustainability standards board", KPMG, Accessed December 1, 2021 at:https://home.kpmg/xx/en/home/insights/2021/11/sustainability-reporting-climatechange-issb.html