



December 10, 2021

To:

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

Attention: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Re: Comments on the Proposed Rule from the Investment Consultants' Sustainability Working Group-US (ICSWG-US)

To whom it may concern:

The Investment Consultants Sustainability Working Group - United States (ICSWG-US) is a collaboration among fifteen investment consulting firms to engage with its collective stakeholders, and empower asset owners and their ultimate beneficiaries, to advance sustainable investment practices across the investment industry.

The ICSWG-US concurs with the U.S. Department of Labor's Acting Assistant Secretary Ali Khawar that the prior rule on Financial Factors in Selecting Plan Investments has had a "chilling effect" on the consideration of the risks and opportunities associated with Environmental, Social, and Governance (ESG) integration by ERISA fiduciaries. The ICSWG-US seeks regulatory clarity and consistency from the DOL on the topic of ESG and encourages the consideration of comments to finalize a rule that may stand for the long term. We welcome and appreciate the new guidance.

The ICSWG-US supports the proposed rule's objective of clarifying that ESG factors can be material to investment outcomes and can be material when ERISA fiduciaries exercise their shareholder rights, including voting proxies. We strongly support the Department's central guidance that where ESG factors are financially material, it is prudent to incorporate them into investment analysis, just like any other factors.

The ICSWG-US supports the removal of barriers between traditional and non-traditional financial considerations as described in the preamble and the proposed rule itself to specify that a "prudent fiduciary may consider any factor in the evaluation of an investment or investment course of action that, depending on the fact and circumstances, is material to the risk-return analysis..."



The ICSWG-US believes that it is important that the proposed rule includes the language that fiduciaries "not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits" and "may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to interests of the participants and beneficiaries".

The ICSWG-US supports the intent of the proposed rule to address the so-called "tiebreaker rule," whereby for otherwise similar investments, other factors can be considered in selection to break the tie. The proposed rule states that investments that "equally serve the financial interests of the plan" can be differentiated by the "collateral benefits" (non-financial benefits) they provide. The preamble suggests that using the broad language of equally serving the financial interests of the plan was intentional to give fiduciaries more latitude, understanding that no two proposed investments are indistinguishable in every way. This type of clarification is helpful, as the categorization of investments as indistinguishable, as in the prior rule, sets an almost impossible bar for investment evaluation.

The ICSWG-US appreciates that the proposed rule addresses ESG integration in defined contribution plans and investment options they offer, including the qualified default investment alternative (QDIA). We believe that if the language that collateral benefits must be "prominently displayed in disclosure materials provided to participants and beneficiaries" stands, it will be crucial for the DOL to provide guidance after the rule is published to ensure that standards such as "prominently displayed" are broadly understandable for ERISA fiduciaries implementing ESG integration.

The ICSWG-US supports the language on proxy voting that is similar to that in the ESG section, stating that fiduciaries must exercise their shareholder rights prudently and for the benefit of participants and beneficiaries; these duties cannot be "subordinated" to other causes.

The ICSWG-US appreciates that the proposed rule intends not to dissuade fiduciaries from voting proxies when the topic is one that could financially impact the plan's investment, nor to dissuade fiduciaries from not voting where the costs to vote outweigh the benefit of voting.

The ICSWG-US notes that the proposed rule differentiates between when plans vote their own proxies from when that duty is delegated to investment managers. The proposed rule states that investment managers should vote proxies in proportion to each plan's economic interest in a pooled vehicle, if there is a conflict between plan proxy voting policies. We believe the Department is creating a framework that would provide value to some plan sponsors, but that all asset managers are not in a position to offer that capability today. We suggest the Department acknowledge the operational challenge for investment managers to implement this approach at this time, given managers have been unable to vote pooled vehicles proportionally, although we are seeing some changes on this front. We further suggest that the Department issue subsequent guidance and allow time for managers to fully implement this capability for those plan sponsors that are interested in this proxy voting approach. The proposed rule does note an alternative, in



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which an investment manager has a proxy voting policy that participating plans are required to accept prior to investing in the vehicle.

Overall, the ICSWG-US seeks a final rule that will be broadly accepted by the investment industry and will provide consistent guidance that withstands the test of time. The ICSWG-US also recommends the Department issue additional guidance to assist fiduciaries in complying with the final rule.

Thank you for your consideration. We welcome the opportunity to speak with DOL representatives to the extent it would be helpful to your efforts. Please contact us at info@ICSWG-US.org.

Sincerely,
ICSWG-US

About ICSWG-US (www.ICSWG-US.com)

The Investment Consultants Sustainable Working Group - United States (ICSWG-US) is a collaboration among investment consulting firms to engage with its collective stakeholders, and empower asset owners and their ultimate beneficiaries to advance sustainable investment practices across the investment industry. The ICSWG-US aims to support sustainable investment practices across institutional asset owners and asset managers. Through this effort, ICSWG-US members will seek to provide perspectives from the consultant community and be a resource on activities such as standardization of environmental, social, and governance (ESG) integration and climate-related reporting, regulations, and innovations. Overall, the group will strive for an equitable and informed path toward genuine sustainable institutional investing.