PUBLIC SUBMISSION

Received: December 13, 2021
Tracking No. kx5-6pu8-pb2k
Comments Due: December 13, 2021
Submission Type: Web

Docket: EBSA-2021-0013
Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Comment On: EBSA-2021-0013-0001
Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Document: EBSA-2021-0013-DRAFT-4014

Submitter Information

Organization: Texas Public Policy Foundation

General Comment

Ali Khawar
Principal Deputy Assistant Secretary of Labor
Employee Benefits Security Administration
200 Constitution Ave NW
Suite S-2524
Washington, D.C. 20210

Assistant Secretary Khawar:

Life:Powered, an initiative of the Texas Public Policy Foundation to raise America's energy IQ, offers the following comment on the proposed rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights."

The first attachment is the comment Life:Powered submitted in response to the proposed "Financial Factors in Selecting Plan Investments" rule, outlining some of the risks to plan beneficiaries of allowing or encouraging fund managers to employ amorphous environmental and social factors in their investment decisions and fund selection. For example, climate risk is particularly difficult to quantify, and the impact of warmer temperatures on many industries and geographic regions could be positive when many advocates of incorporating climate risk into investment decisions often assume, without sufficient evidence, that the impact on investment returns will be negative. Efficient markets should be incorporating these risks into prices, and attempts to "outguess" the markets in this sense will likely lead to investments that underperform the broader market.

With that said, the debate over whether a fund's skillful consideration of these factors could produce higher or lower investment returns may be impossible to resolve, and in a general sense, plan managers should be free to determine whether specific investments could produce higher returns. However, funds that attempt to incorporate these risk factors tend to be more actively managed and charge higher fees, thereby posing a risk of lower net returns to plan beneficiaries. Any new regulations should be clear that plan managers who regularly utilize funds with higher fees that lack clear evidence of greater long-term returns could be acting in violation of their fiduciary duty.

Also attached is a paper titled "Corporate Collusion: Liability Risks for the ESG Agenda to Charge Higher Fees and Rig the Market", which outlines potential legal problems with broadening the scope of the fiduciary standards in the ERISA statute. We request that the Employee Benefits Security Administration consider these concerns in writing its final rule and focus on clarifying, rather than moving away from, the fiduciary standards articulated in the "Financial Factors in Selecting Plan Investments" rule.

Sincerely,
Brent Bennett
Policy Director, Life:Powered
Texas Public Policy Foundation
901 Congress Ave.
Austin, TX 78701
512-472-2700

Attachments

2020-07-30 Life Powered ESG Rule Comments

2021-06 - RR- Gray - LP - Corporate Collusion