



December 13, 2021

VIA ELECTRONIC FILING

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

LGIM America
71 South Wacker Drive
Suite 800
Chicago, IL 60606
www.lgima.com

Re: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (the “Proposed Rule”)

Dear Acting Assistant Secretary Khawar,

LGIM America is a U.S. registered investment advisor with \$262 billion in assets under management (“AUM”)¹. LGIM America is the US-based affiliate of Legal & General Investment Management Limited (“LGIM”), a subsidiary of Legal & General Group (est. 1836), a multinational financial services company that is the 6th largest institutional global asset manager with over \$1.8 trillion in AUM². In the US, approximately 77% of our assets are from pension plan clients; globally that figure is approximately 81%.

As a significant investor, we share a responsibility to ensure that global markets operate efficiently and uphold the highest level of corporate governance and sustainability standards to protect the integrity of the market – and our client’s assets - over the long term. In this context, we are not seeking short-term gains but rather the sustainable economic growth and returns in the markets that we invest in. We take our responsibility and fiduciary duty very seriously and have a long history of engagement in markets across the world. Please see our latest Active Ownership Report³ for further information.

In this context, LGIM America is well positioned to provide feedback on the Proposed Rule, which amend the Investment Duties regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). LGIM America has outlined the overall position below and more detailed recommendations on the next pages.

Overall Position

LGIM America strongly supports the Proposed Rule. The proposals provide long-awaited clarity and very helpful guidance on the incorporation of environmental, social, and governance (“ESG”) factors into the investment decision making process. These amendments align the Department of Labor (“DoL”) rulemaking with current financial practices in the United States and is a natural step in the continuous evolution towards a more stable and resilient global economy.

¹ AUM as of September 30, 2021.

² AUM as of June 30, 2021. The AUM disclosed aggregates the assets managed by Legal & General Investment Management (LGIM) in the UK, Legal & General Investment Management America (LGIMA) in the US, and Legal & General Investment Management (LGIM -Asia) in Hong Kong. The AUM includes the value of securities and derivatives positions. Conversion rate: 1 GBP = 1.3838 USD, as of June 30, 2021. Pensions & Investments (P&I) ranking by total worldwide institutional assets under management, as of May 31, 2021.

³ <https://www.lgim.com/landg-assets/lgim/document-library/capabilities/active-ownership-report-2020.pdf>

Key Areas

We have detailed more specific feedback and recommendations on three key areas:

- **Material risk**

We welcome the clarity provided by paragraph (b)(4), which explicitly confirms that a fiduciary may consider any factor material to the risk-return analysis, including climate change and other ESG factors. Since 1978, DoL regulations have required fiduciaries to consider all relevant factors when choosing among available investment options. The “Financial Factors in Selecting Plan Investments Rule (the “Financial Factors Rule”) replaced this with a “pecuniary” test. The Proposed Rule appropriately eliminates this new term, restoring the traditional all-relevant-factors test.

In October 2020, we commented⁴ that the Financial Factors Rule, in our opinion, applied an incorrect blanket view that ESG factors were suspect and irrelevant to the investment decision making process. At the time, we stated that ESG factors tend to address long-term systematic issues that may be difficult to quantify in the short-term or they produce success that is difficult to measure because it is reflected in overall market value. We continue to stand by that view. As a long-term investor focused on creating sustainable value for our clients, we take a holistic approach to investment decision making and believe that ESG factors should not be precluded from that mosaic of considered information. This is precisely why we also commented⁵ on the SEC’s climate change disclosures rulemaking process, in which we expressed a desire for further disclosure on the topic of climate change and ESG factors more broadly – so that a holistic evaluation of all relevant factors can be considered.

- **Tie-breaker rule**

The clarification of the “tie-breaker” rule is also a strong addition. Despite the meteoric rise in interest around ESG funds, we have found it disappointing that historically the option to invest in ESG funds are largely absent from the retirement accounts of the American workforce. According to 2019 data from the Plan Sponsor Council of America, 3% of retirement accounts had an ESG option, which represents 0.1% of plan assets⁶, compared to the nearly 33% of all professionally managed assets being managed using ESG investment rules⁷. With the new tie-breaker language, which allows for a fiduciary to consider collateral benefits in selecting a plan investment if the fiduciary concludes that the competing investments carry equal risk and return profiles, we believe plan participants are given more choice in how they invest.

One recommendation for the DoL is to address the possibility that the tie-breaker language might connote a separation between an investment’s ESG attributes and its risk-return profile. Instead, we believe that ESG attributes are integrated into the risk-return profile of an investment, as evidenced in recent research⁸, and will continue to become more integrated as other asset managers recognize its relevance. So, while the tie-breaker rule is a step in the right direction, it treats ESG as an added benefit, when in actuality it’s part and parcel to the risk and return evaluation. Of course, there are ESG attributes that are not always relevant to the risk and return of an investment but are nonetheless important to the plan participant.

With this new clarification, we foresee less hesitancy among plan administrators to include ESG funds in their suite of options, which ultimately provides plan participants with more choice in which funds represent their risk appetite and return expectation, while also allowing them to invest in accordance with their values.

⁴ <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00182.pdf>

⁵ <https://www.sec.gov/comments/climate-disclosure/cl12-8911743-244392.pdf>

⁶ <https://www.napa-net.org/news-info/daily-news/another-record-year-retirement-savings>

⁷ <https://www.cnbc.com/2020/12/11/heres-why-401k-plans-lag-in-green-investment-options.html>

⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3004689

- **Qualified default investment alternative**

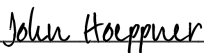
The language addressing the option for investment alternatives that use ESG factors to serve as a qualified default investment alternative (“QDIA”) is significant and a positive development.

This language addresses the issue of plan participant proactiveness on their retirement plans. Often plan participants are automatically enrolled in their company’s 401(k) plan and do not proactively select the investments to match their unique preferences. Given that multiple survey results and non-retirement dollars invested indicate a preference for ESG and sustainable investing funds, there is a possible mismatch between what plan participants are likely to want and what their automatically invested in. Allowing for ESG funds to be the default option could close the gap between the preferences of participants and their actual allocation.

We acknowledge the pushback some may have on the inclusion of ESG funds in retirement accounts. One particular pushback is the lack of standardization on ESG and sustainability disclosures⁹. While that is a fair criticism for now, there are significant international efforts to bring greater standardization across markets. For example, at UN’s COP26 in Glasgow this year, the International Sustainable Standards Board was announced to harmonize the various reporting frameworks into one clear framework¹⁰. This will be overseen by the International Financial Reporting Standards (IFRS) body, and we believe this is a huge leap forward in ensuring a more systematic evaluation of ESG factors. As a large asset manager, we continue to do our part to bring additional disclosures to light so that this process of self-regulation via the free market is expedited.

Overall, we are optimistic about the Proposed Rule and firmly believe it will ultimately be beneficial for plan participants and our clients. We appreciate the opportunity to comment on this Proposed Rule and are happy to discuss these topics in more detail or answer any follow-up questions.

Yours Sincerely,

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John Hoepfner

Head of US Stewardship and Sustainable Investments
LGIM America

⁹ <https://www.wsj.com/articles/should-esg-funds-be-in-retirement-plans-11631729292>

¹⁰ <https://www.nasdaq.com/articles/esg-disclosure-standards-go-global-with-issb-launch-2021-11-05>