



July 24, 2020

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

RE: Proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

The National Taxpayers Union (NTU) is pleased to submit the following comments in response to the Department's proposed rule on "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95), as it relates to Environmental, Social, and Governance (ESG) investing. NTU applauds the Department for offering a rule that remains consistent with the original intent of the Employee Retirement Income Security Act (ERISA) to ensure the financial protection of investors.

Founded in 1969, NTU is the nation's oldest taxpayer advocacy organization. As a nonpartisan nonprofit, NTU has been an influential voice in shaping state and federal fiscal and regulatory policy for over fifty years and has written to this Department on numerous occasions. Specifically, over the last several years we have advocated for the repeal of several harmful regulations, such as the Fiduciary Rule, Overtime Rule, Joint-Employer Rule, and many others. DOL should be praised for its continued commitment to retool or repeal burdensome regulations that harm workers, investors, and job creators.

Late last month, the Department of Labor proposed a new rule that would require private pension administrators to prove that they are not sacrificing financial returns if they put money in ESG-oriented investments. Since ERISA requires investment decisions be based solely on whether they enhance retirement savings, regardless of the fiduciary's personal preferences, we strongly believe this proposed rule is consistent with the purpose of ERISA. It also requires fiduciaries to provide evidence that ESG-oriented investments have been chosen solely on "objective risk-return criteria."

In the proposed rule, DOL states that it has become concerned "that the growing emphasis on ESG investing may be prompting ERISA plan fiduciaries [including those for DC plans] to make investment decisions for purposes distinct from providing benefits to participants and beneficiaries." The Labor Department's actions effectively make it more difficult for activists to pursue social policy via their client's resources. Such efforts represent nothing less than an attempt to effectively gamble the retirement wealth of savers to advance a political agenda.

This proposal is straightforward and entirely reasonable. Essentially, managers who are charged with safeguarding the investments of their clients should only have one responsibility: maximizing returns.

While critics of the proposed rule claim this rule will severely hamper the availability of ESG investments, NTU disagrees. So long as firms show their work to ensure they are not sacrificing returns to boost social activism, these firms will still be able to consider ESG factors in their investments. To that end, the proposed rule would prohibit a retirement plan fiduciary from making any investment, or choosing an investment fund, based on the consideration of an environmental, social or governance factor unless that factor independently represents a material economic investment consideration under generally accepted investment theories or serves as a tiebreaker in what the DOL characterizes as the rare case of economically equivalent investments.

While NTU supports the underlying purpose of RIN 1210-AB95, we have concerns regarding provisions that prohibit certain funds from being the default option in 401(k) plans. There is some merit in having ESG funds, and there is evidence that some ESG funds can outperform the market as a whole, which gives some argument to having some ESG funds that can maximize returns. To that end, we do not believe it is proper for a government agency to determine what private companies can or cannot list as a default option, so long as consumers are aware of what is happening and can opt into different investments.

Nonetheless, for the aforementioned reasons, NTU respectfully submits this comment in support of the Proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95). NTU is at your service to further assist you in your deliberations and we are thankful for your consideration of our views.

Sincerely,

Thomas Aiello  
Policy and Government Affairs Manager