This Comment is regarding the proposed rule, titled: Financial Factors in Selecting Plan Investments
Agency Name: Employee Benefits Security Administration
Document RIN: 1210-AB95

Title I of ERISA already establishes standards which require that employee benefit plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries. According to a statement in the Regulatory Impact Analysis of the proposed rule on federalregister.gov, the new regulation seeks to "*eliminate confusion that plan fiduciaries may currently face in the marketplace and reiterate long-established fiduciary standards of prudence and loyalty for selecting and monitoring investments*." The Impact Analysis also states *"While the Department does not have sufficient data to estimate the number of such fiduciaries, the Department believes it is small, because most fiduciaries are operating in compliance with the Department's sub-regulatory guidance."* These statements indicate that this new regulation is not being established based on evidence that there is any significant confusion or lack of adherence to long-established fiduciary standards. Furthermore, the new proposal gives no evidence that ESG investments are inherently more risky or have fewer financial benefits for plan participants and beneficiaries. This new regulation, which purportedly is being proposed to benefit plan participants, is being rushed through with a 30-day, rather than the customary 90-day comment period. Rather than benefit plan participants and beneficiaries, it will unnecessarily restrict financial managers ability to comply with the wishes of pensioners who not only want financial security, but also seek to have their invested funds be aligned with their values.

Thirteen Democratic Senators have written the Department of Labor to express their concerns regarding this proposal. I agree with their statement: *"The proposed rule not only would impose a burdensome process for including ESG investments in ERISA-governed retirement plans, but it also arbitrarily prohibits the use of ESG funds as a Qualified Default Investment Alternative ("QDIA") in a defined contribution plan, either as the QDIA itself or as a component of one. Among other things, the proposed rule would undermine the ability to consider firms' records on race and diversity when making investment decisions . . . We are at pivotal moment in the fight against systemic racism in our country. Yet, while people across the country demand accountability and reach for available tools to fight for racial and economic equity—from advocating for sweeping federal reforms to address systemic racism to taking smaller personal steps like supporting Black-owned businesses—the Department is moving in the opposite direction. ESG investing allows retirement savers to support long-term change by building a system that rewards and values inclusion and diversity in corporate culture from the board to the workforce. By restricting ESG investing, the Department's proposal would undermine a powerful tool that leverages trillions of dollars a year to drive positive social change."*

As a retired California teacher with a pension from CalSTRS, I am aware that the CalSTRS board takes their fiduciary responsibility very seriously, and at the same time, has an Investment Policy for Mitigating Environmental, Social, and Governance Risks. In their policy statement, they note: *"CalSTRS invests a multi-billion dollar fund in a unique and complex social-economic milieu and recognizes it can neither operate nor invest in a vacuum . . . . . Consistent with its fiduciary responsibilities to CalSTRS members, the Board has an obligation to ensure that the corporations and entities in which CalSTRS invests strive for long-term sustainability in their operations. Managers of our investments who do not strive for sustainability jeopardize achieving the long-term expected rate of return we expect."*

Financial experts such as Brian Deese, Blackrock's Global Head of Sustainable Investing, agree with CalSTRS. In a February 22nd, 2020 interview between Brian and MiB Podcast's host Barry Ritholtz, Brian explains the importance of considering ESG risks: *"we wanted to communicate our view as a fiduciary, as an entity that our principal goal is to try to think forward on behalf of our clients to what will be important to delivering them their long-term financial goals. And in that context, we wanted to communicate two things. One, our view that climate risk is investment risk and that's going to have big implications on how we think about a lot of these core questions of how we think about duration assets, how we think about risk going forward. And the second is that there is a larger societal shift right now toward a focus on sustainability and changing expectations of companies that we believe will escalate, that they're structural drivers behind that that will escalate across time and therefore, companies that are not thinking forward to what that means for their business model and trying to get ahead of that are going to struggle to deliver long-term profitability because this is going to become an increasingly important part of the financial conversation to look forward . . . Similar to your example, if we know that diverse groups of people make better decisions across time that may take a little longer to make them but they make better decisions across time, we want to understand how a company is structured in terms of their governance and in terms of their employment practices to actually encourage more diversity of thought across their company and management."*

Incorporating ESG considerations into investment plans is not inherently risky, and indeed is a useful tool in assessing the risk of an investment. I urge you to withdraw this unnecessary proposed rule, and focus on ways to drive positive change in our nation.

Sincerely,

Diana Curiel