UNITARIAN
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ASSOCIATION

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Submitted via regulations.gov

Office of Regulations and Interpretations US 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)

To whom it may concern:

We are writing to object to the Department of Labor's proposed rule, "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposal"). We believe it is fatally flawed and should be withdrawn immediately. It is not clear that there is any problem that needs to be solved, but if the Department believes so, it should do the necessary research and analysis before releasing proposed rules. Further, the Department should allow for a 120-day comment period before finalizing rules that would affect the retirement savings of millions of Americans.

The Unitarian Universalist Association ("UUA") is a faith community of more than 1000 self-governing congregations that brings to the world a vision of religious freedom, tolerance and social justice. The Association sponsors a retirement program, the Unitarian Universalist Organizations Retirement Plan (the Plan), for the ministers and staff of its congregations and for its national staff. The Plan is a 401(a) defined contribution plan with 4,317 participating individuals with investments of $420 million.

While the Plan is not subject to ERISA – it is a Church Plan – our legal counsel advises us that adherence to ERISA rules is best practice and mitigates against litigation risk. The UUA has always adhered to ERISA rules. Currently the Plan includes several ESG funds among its offerings. Some of these have been in the Plan since the late 1990s, and they are very popular with our participants. We are concerned that the new rule will force us to remove the ESG funds or incur significant cost to prepare a justification for their inclusion. The UUA does not have in-house staff who have the time, capacity or skills to prepare such analyses, so we would be forced to engage an outside consultant to do this work. The cost, which could be significant, would be charged to the Plan and therefore come out of the pockets of the participants. The proposed rule does not account for these costs. The other option would be to remove these funds from the options available to participants. In this case, we are deeply concerned about the potential disruption to the Plan's operations and sowing confusion among participants, many of whom are elderly, if we have to force changes in their investment portfolios.

As mentioned above, the UUA has included ESG funds, or what used to be call Socially Responsible Investing (SRI) funds, in its retirement plan for decades. Our investment consultant, Fiduciary Investment Advisors, regularly reviews all of our fund offerings and recommends changes if managers do not produce solid risk adjusted returns from a long-term perspective. Our experience is that these ESG/SRI funds have performed well over the long term and have provided protection in down markets, such as 2020. This is particularly important to participants who are retired and are drawing down their accounts.

The language of the rule seems to suggest that it is a given that ESG/SRI funds perform worse than funds that do not factor ESG data into their strategies. Where have you been? Have you done any research? In fact, the overwhelming weight of the research, conducted over decades, shows that ESG funds mitigate risk and deliver competitive returns. Many studies even show that ESG funds outperform. And recent experience during the pandemic has shown that ESG funds performed better than the general market thus preserving capital for their investors. In their analysis, Blackrock found that 94 per cent of a globally representative selection of sustainable indices outperformed their parent benchmarks during the first quarter of 2020. Blackrock goes on to say that "these results are consistent with the research BlackRock has been publishing since mid-2018, demonstrating that sustainable strategies do not require a return trade off and have important resilient properties."[1]

Others have provided the supporting references on ESG performance, so I will not do so here. But I would point you to the following comment letters for references to relevant research:

- Letter from Robert Monks and Nell Minow of Value Edge Advisors[2]
- Letter from Jon Lukomnik and other distinguished scholars and professionals[3]

[1] https://www.blackrock.com/corporate/literature/investor-education/sustainable-investing-resilience.pdf

[2] https://valueedgeadvisors.com/2020/07/20/our-comment-to-dol-ebsa-on-esg/

[3] https://corpgov.law.harvard.edu/2020/07/21/comment-letter-on-proposed-regulation-of-esg-standards-in-erisa-plans/

- Letter from the Interfaith Center on Corporate Responsibility, signed on to by the UUA.[4]

The rule that prohibits employing ESG funds as a QDIA is particularly confusing and troubling. Ten years ago, the UUA selected T Rowe Price for the Plan's target date funds offering, which we have designated our QDIA. We did so based on an analysis of available funds conducted by our consultant, Fiduciary Investment Advisors, that found that the TRP offering was well managed and had a strong performance record. A few years ago, TRP signed on to the UN's Principles for Responsible Investing (PRI). In doing so they made this commitment: "We will incorporate ESG issues into investment analysis and decision-making processes." Furthermore, in signing on to the PRI, they stated that they aspired to "better align our investment activities with the broader interests of society."[5] Does this mean they are suddenly an ESG fund? The proposed rule does not provide clear guidance. Assuming the affirmative, does the rule require us to choose another fund family for our target date fund and incur the expense of a search and conversion process? And then what if that manager decides to sign on to the PRI? Rinse and repeat?

Our other serious concern is that the rule seems to put so many funds in the category that would require additional analysis and justification. As others have pointed out, according to the US SIF 2018 Trends Report, sustainable, responsible and impact investing assets now account for $12.0 trillion—or one in four dollars—of the $46.6 trillion in total assets under professional management in the United States.[6] Thus, the rule would exclude a very large number of funds from consideration by our Plan or require additional analysis adding cost and reducing participant returns. We are concerned about so severely restricting the investment universe. Basic investment wisdom says that if you significantly restrict investment options, returns will suffer. Thus, at least in the case of small funds like the UUA's, this would harm participants by limiting investment options.

Finally, I would like to emphasize a point made in the comment letter from Nell Minow and Robert Monks of Value Edge Advisors. They write, "We note that while at times the term 'non-financial' has been used to describe the criteria for evaluating ESG investments, the record shows that a more appropriate term is 'non-GAAP.' While ESG is an emerging field and the value of its various measures are still

[4] https://www.iccr.org/sites/default/files/page_attachments/comment_on_dol_esg_letter.pdf

[5] https://www.unpri.org/pri/an-introduction-to-responsible-investment/what-are-the-principles-for-responsible-investment

[6] https://www.ussif.org/files/US%20SIF%20Trends%20Report%202018%20Release.pdf

evolving, every ESG measure that has been used to evaluate an investment opportunity has been directly related to investment risk."[7]

GAAP financial statements are quite limited in what they disclose. They are backward looking and only report data from the operations of a company. Even earnings guidance only goes out a few quarters, at most. To say this is all investment managers should be looking at when picking securities assumes companies exist in a capsule isolated from the larger world. In fact, companies affect and are affected by other companies, communities, the natural world, geopolitics, social divisions, and public health. Just look at the COVID-19 crisis. ESG data and analysis looks at companies in this larger context and provides useful data that helps investors understand the risks and opportunities facing companies and is forward looking. That is why ESG analysis is becoming so widely adopted.

In the words of Monks and Minow: "What investors have learned in the decades since the passage of ERISA and the rise of unprecedented percentages of investor capital being managed by intermediaries is that GAAP, much of which is still based on 19th century concepts about asset valuation, fall short when it comes to 21st century risk assessment. This is why sophisticated financial investors who are acting as fiduciaries increasingly look to a wider range of indicators of investment risk and opportunities for enhanced returns."[8]

In short, the proposed rule is confusing, unworkable, and based on the prejudices of the authors, not sound research and investment data. It should be withdrawn immediately.

Very truly yours,

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[7] https://valueedgeadvisors.com/2020/07/20/our-comment-to-dol-ebsa-on-esg/
[8] https://valueedgeadvisors.com/2020/07/20/our-comment-to-dol-ebsa-on-esg/