**NSSF®**
*The Firearm Industry Trade Association*

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

Re: RIN 1210-AB95: *Financial Factors in Selecting Plan Investments*

To whom it may concern:

The National Shooting Sports Foundation (NSSF) appreciates the opportunity to provide comment to the Department of Labor on RIN 1210-AB95, the Employee Benefits Security Administration's proposed rule on Financial Factors in Selecting Plan Investments.[1]

NSSF is the trade association for the firearm and ammunition industry. In light of systemic efforts in recent years to use pension plan investments to achieve non-financial objectives, NSSF appreciates that the DOL has proposed a rule to provide clear guidance on environmental, social and governance (ESG) investing.

NSSF agrees that retirement plans are not appropriate vehicles for furthering social or policy goals that are not in the interest of the beneficiaries. Fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA) are obligated to select investments for the sole purpose of providing benefits to plan participants and to act with "complete and undivided loyalty to the beneficiaries."[2] American workers depend on these plans for their retirement security and their interests must be safeguarded against purely political motives.

The core additions included in the rule will help to clarify longstanding DOL positions and to help ensure that ERISA fiduciaries are selecting investments based on financial considerations and not increasing risk for the purpose of non-pecuniary goals.[3]

In recent years, both ERISA plans and publicly traded firearm manufacturers have faced third party pressure to meet political demands from activists through ESG investments or actions. Driving these efforts are ESG ratings firms profiting from the promotion of non-pecuniary ESG investing factors, rather than shareholder value. Rather than offering information or analysis on the safety programs, community outreach initiatives or other efforts taken by firearm and ammunition companies, these firms operate under blind standards with no disclosure of our industry's extensive ESG work.

NSSF strongly supports the DOL's position that ERISA fiduciaries should be "skeptical" of ESG ratings systems.[4] It is crucial that the proposed rule acknowledges the fact that ESG ratings firms

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[1] *Financial Factors in Selecting Plan Investments*, 85 Fed. Reg. 39113 (30 June 2020). RIN 1210-AB95, *available at* https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13705.pdf. Hereinafter, "proposed rule."

[2] *Donovan v. Mazzola*, 716 F.2d 1226, 1238 (9th Cir. 1983) (quoting *Freund v. Marshall & Ilsley Bank*, 485 F. Supp. 629, 639 (W.D. Wis. 1979)).

[3] In 2014 the Supreme Court unanimously held in the context of ERISA retirement plans that such interests must be understood to refer to ''financial'' rather than ''nonpecuniary'' benefits. See: Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409, 421 (2014).

[4] Proposed Rule, at 39118.

‘‘typically emphasize tick-the-box policies and disclosure levels, data points unrelated to investment performance, and/or backward-looking negative events with little predictive power.”[5] The politically-motivated practices and misleading marketing of these unregulated firms should not be allowed to influence American workers’ retirement security.

We acknowledge that there may in rare instances be ESG factors that are pecuniary and appreciate the rule’s inclusion of regulatory text on required risk-return analysis and documentation requirements to ensure that these are material economic considerations aligned with financial objectives. However, as the DOL notes, such investment based on ESG factors “raises heightened concerns under ERISA.”[6] This is particularly important as many ESG funds specifically disclose the increased risks, reduced returns and higher fees that are inherent in their social goals.

Given the well-established standards for ERISA fiduciaries, NSSF applauds the DOL for explicitly stating that plan managers “must never sacrifice investment returns, take on additional investment risk, or pay higher fees to promote non-pecuniary benefits or goals.”[7] Overall, NSSF supports the DOL proposal to provide ERISA fiduciaries with clear guidelines on selecting pension plan investments and to ensure that non-pecuniary ESG factors do not put participants’ retirement savings at risk.

However, the goal of fiduciaries must remain to protect the investments of plan participants, even after an investment decision has been made. [8] Looking forward, NSSF urges the DOL to promulgate a rule clarifying that ERISA fiduciaries are obligated to put plan participants’ interests first when considering proxy votes, proxy proposals, and proxy voting service providers. [9] Proxy voting and related decisions should not be guided by non-pecuniary or social goals.

Sincerely,

Lawrence G. Keane

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[5] Proposed Rule, at 39115.

[6] Proposed Rule, at 39115.

[7] Proposed Rule, at 39116.

[8] *See, e.g., Field Assistance Bulletin No. 2018-01*. Employee Benefits Security Administration, April 2018. *Available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01.

[9] Research has shown that ESG-driven proxy proposals can in fact destroy shareholder value. *See, e.g., Political, Social, and Environmental Shareholder Resolutions: Do They Create or Destroy Shareholder Value?* Joseph P. Kalt, L. Adel Turki, et al., June 2018. *Available at* http://www.shopfloor.org/wp-content/uploads/2018/06/nam_shareholder_resolutions_survey.pdf.