

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

July 30, 2020

Re: Proposed Rule: Financial Factors in Selecting Plan Investments ([RIN 1210-AB95])

Ladies and Gentlemen:

ASB Capital Management LLC (“ASB”) appreciates the opportunity to provide comments on the proposed amendments to the “Investment Duties” regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), published by the Department of Labor in the Federal Register on June 30, 2020 (the “Proposed Amendments”).

ASB, manager of the Allegiance Fund, is one of the largest institutional investment management firms in the Washington, D.C. area. ASB helps pension plans, unions, endowments, foundations, and other organizations across the country maximize economic returns and mitigate investment risk on behalf of their beneficiaries. ASB regularly serves as a fiduciary under ERISA.

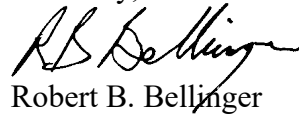
ASB agrees that an ERISA fiduciary may not sacrifice or subordinate the interests of participants and beneficiaries in financial benefits to unrelated non-pecuniary objectives. However, ASB is concerned that the portion of the Proposed Amendments that requires investments and investment courses of action to be evaluated “based solely on pecuniary factors” may be construed as casting suspicion on the consideration of certain factors that ASB believes have a materially positive effect on the return and risk of its investments, merely because such factors also support social and other objectives that may be considered to be “unrelated.” In particular, ASB believes that the use of union labor in real estate projects that it considers for investment or manages is often a favorable factor in terms of ensuring the quality of real estate projects and the reliability of services provided to managed properties, ultimately reducing long term repairs and maintenance expenses and extending the useful life of real estate capital expenditures. After decades of investment experience, ASB has generally found union labor to be well-trained, highly skilled and more reliable, and our long term investment returns provide evidence that union built assets perform well, particularly on a risk adjusted basis. In our experience, union labor should be a favorable factor in the evaluation of investments by investors subject to ERISA, and in the engagement of service providers for properties managed for such investors. The emphasis in the proposed amendments on pecuniary considerations fails to recognize the importance of such qualitative considerations.

We believe that the Proposed Amendments, as currently formulated, may have a burdensome effect on plan sponsors who prudently analyze the services of investment managers that believe that the use of union labor is a material consideration in seeking to maximize the return and mitigate the risk of real estate investments. Neither the investment manager nor the plan sponsor should be required to document special reasons for following its investment theses, merely because an investment thesis incorporates a consideration or judgment that some might regard as having a secondary social benefit, such as the use of union labor that provides fair and reasonable wages, requires safe working conditions, and utilizes exceptional training for skilled trades. ASB

encourages the Department to consider revisions to the Proposed Amendments to clarify that prudent fiduciary consideration of pecuniary factors, such as the use of union labor that also happen to have a social or political impact, not be construed as sacrificing or subordinating the interests of participants and beneficiaries in financial benefits to unrelated objectives.

ASB is committed to generating the best economic results possible and acting in the best interests of its investors, including those subject to ERISA, within the parameters of its investment processes and theses. Our investors are sophisticated and capable of rigorously evaluating those investment processes and theses in a manner consistent with their fiduciary duties, without having to do so in the shadow of a new regulation that would treat consideration of certain factors as requiring increased analysis in order to show they are in the best interests of participants and beneficiaries. We believe that the Proposed Amendments should acknowledge that the use of union labor may mitigate economic risks present in many investments and present pecuniary opportunities that, in a manner consistent with the language of the Proposed Amendments, “qualified investment professionals would treat as material economic considerations under generally accepted investment principles.”

Sincerely,

A handwritten signature in black ink, appearing to read "R. B. Bellinger", written over a horizontal line.

Robert B. Bellinger

President and CEO, ASB Capital Management LLC
Executive Portfolio Manager, ASB Allegiance Real Estate Fund