A Union of Professionals

American Federation
of Teachers, AFL-CIO

AFT Teachers
AFT PSRP
AFT Higher Education
AFT Public Employees
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Professionals

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July 30, 2020

Mr. Joe Canary, Director
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: Financial Factors in Selecting Plan Investments Proposed Regulation (RIN 1210-AB95)

Dear Director Canary:

On behalf of the American Federation of Teachers (the "AFT"), I am writing to express strong opposition to the U.S. Department of Labor's proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposed Rule"). In our view, the Proposed Rule is arbitrary, would upend longstanding Department of Labor guidance and impose unnecessary burdens on fiduciaries for no apparent benefit, and may suppress investment in beneficial and prudent investments, including minority and women-owned asset managers.

The AFT is a union of 1.7 million members, including pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; and nurses and other healthcare professionals. Most AFT members participate in public-sector defined benefit pension plans totaling an estimated $3 trillion, and a smaller portion of our members participate in private, defined contribution retirement plans. Many of these retirement plans have an established track record of making well advised investments that create collateral benefits for communities, while simultaneously producing competitive risk-adjusted returns to pay benefits. While the Proposed Rule will not directly apply to public pension plans, many of those plans look to the Employee Retirement Security Act of 1974 ("ERISA") for guidance and best practice, therefore the Proposed Rule will certainly impact the defined benefit pension plans that our members contribute to and rely on for a secure retirement

ERISA was enacted in 1974 to protect retirement savers by setting high standards for retirement plan fiduciaries, requiring that they act with due "care, skill, prudence, and diligence" and avoid conflicts of interest, in order to maximize retirement savings for plan participants. The Proposed Rule seeks to upend decades of precedent allowing ERISA-regulated retirement plans to invest responsibly under appropriately strict conditions. This precedent has its origins in the Department's guidance regarding economically targeted investments ("ETIs") and more recently on investments guided by environmental, social, and governance ("ESG") considerations. The Department most recently continued to recognize that ETIs and ESG considerations are permitted under appropriate circumstances in the 2008[1] and 2015[2] revised interpretive bulletins.

The Proposed Rule is based on a flawed understanding of the current state of investment knowledge and practice with respect to ETIs and ESG. Consideration of ESG factors in investing is now a mainstream and popular practice among institutional investors in the U.S. and globally, and ESG considerations are often integrated for the purpose of improving returns and mitigating risk in investment portfolios. According to a 2018 Government Accountability Office review of five years' worth of peer reviewed academic studies, "The vast majority (88 percent) of the scenarios in studies we reviewed … reported finding a neutral or positive relationship between the use of ESG information in investment management and financial returns in comparison to otherwise similar investments."[3] According to an analysis by Bank of America Merrill Lynch, ESG investments are associated with lower idiosyncratic risk, lower probability of financial distress and bankruptcy, and superior returns.[4]

Integrating ESG into investment decision making is supported by organizations such as Principles for Responsible Investment (PRI), whose over 3,000 signatories representing over $100 trillion of assets under management globally have committed to "incorporat[ing] ESG issues into investment analysis and decision-making processes."[5] Earlier this year, the Business Roundtable, which is comprised of the CEOs of large U.S. companies, released a "Statement on the Purpose of the Corporation" that centered the wellbeing of stakeholders and communities and recognized the importance of ESG considerations,[6] and in 2019, Larry Fink, Chairman and CEO of BlackRock, the world's largest asset manager, wrote to shareholders that BlackRock would "place sustainability at the center of [its] investment approach."[7]

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[1] 29 CFR 2509.08-1, 73 FR 61735, Oct. 17, 2008 ("the Department believes that, before selecting an economically targeted investment, fiduciaries must have first concluded that the alternative options are truly equal, taking into account a quantitative and qualitative analysis of the economic impact on the plan").

[2] 29 CFR § 2509.2015-01, 80 FR 65137, Oct. 26, 2015.

[3] Government Accountability Office, Retirement Plan Investing: Clearer Information on Consideration of Environmental, Social, and Governance Factors Would be Helpful (May 2018), 7-8, https://www.gao.gov/assets/700/691930.pdf.

[4] https://newsroom.bankofamerica.com/system/files/2019_Environmental_Social_Governance.pdf.

[5] www.unpri.org/pri/about-the-pri

[6] Business Roundtable, "Statement on the Purpose of a Corporation" (2019) https://opportunity.businessroundtable.org/wp-content/uploads/2020/06/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures.pdf.

[7] https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter?cid=ppc%3ABlackRock_USWA%3Agoogle%3Alarryfinkletter&gclid=Cj0KCQiA7briBRD7ARIsABhX8aBf-3t4LvwvZb-sKAWiWTaBDGzZ1SagDnJuYbsAS2cCvEOb_YlrQAIaAn9zEALw_wcB&gclsrc=aw.ds

Given the abundant evidence of the benefits of integrating ESG factors into investment decisions, the Proposed Rule undermines the purpose and intent of ERISA. By discouraging and deterring fiduciaries from investing in ESG-guided funds, the Department is effectively narrowing the field of available investment options for ERISA plans which could force participants into potentially lower-performing investments resulting in lost long-term retirement savings. The Proposed Rule, if passed, would create its own set of unintended consequences, in effect creating a second class of investor who is blind to a set of risks that the Department deems unworthy of consideration. This unnecessary government regulation will create additional red tape for investors who consider ESG factors and is an unwarranted intrusion into the free market for professional asset management.

We are particularly concerned with the Proposed Rule's potential detrimental impact on the selection of diverse asset managers. There is ample evidence showing that including diverse asset managers, such as Minority and Women-Owned Business Enterprises (MWBE), in investment portfolios can produce important benefits, including improved performance over homogenous asset managers and mitigating correlation and risk. Similarly, the AFT believes that lack of racial and gender diversity in a company's leadership and workforce can have a negative impact on performance and constitute an investment risk, and therefore should be considered by investors. With ESG investments often outperforming traditional investments, investors can achieve robust returns and attenuate risk while also fostering positive societal change.

ESG investing has been an effective response to managing investment risks and its popularity with investors is growing rapidly. Targeting ESG investing for onerous and burdensome regulatory treatment, inconsistent with ERISA's purposes, appears to be politically motivated and responsive to corporate interests that have long opposed responsible investment. Interference in the prudent investment decision-making of ERISA retirement plans by the Department of Labor on political grounds rather than to fulfill ERISA's purposes would be arbitrary and capricious.

For these reasons, on behalf of the American Federation of Teachers, I respectfully request that the Proposal be immediately withdrawn. Thank you for your consideration.

Sincerely,

/s/ Randi Weingarten

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Randi Weingarten
President