

December 13, 2021

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

Attention: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Re: RIN 1210-AC03

To Whom It May Concern:

The undersigned organizations write in support of the proposed rules put forth by the Department of Labor (“the Department”) that help clarify that the managers of 401(k)s and private pension plans, governed under the Employee Retirement Income Security Act (“ERISA”), can and should consider material environmental, social and governance (“ESG”) factors in their investment decisions.

The proposal would rescind harmful provisions from a set of rules¹ from the prior administration that created confusion around the ability of fiduciaries under ERISA to incorporate such factors, resulting in a chilling effect of their consideration, to the detriment of their beneficiaries. In particular, the imposed restrictions on the use of ESG products as Qualified Default Investment Alternatives (“QDIA”) and requirements for the “tie-breaker” standard were needlessly complicated and led to market confusion. Similarly, the 2020 rules created unnecessary limitations on when and how ERISA fiduciaries should vote on shareholder proposals or engage corporate managers, effectively suppressing the voices of retirement savers. The Department is wise to rescind these provisions.

For context, the signatories of this letter include members of the Coalition on Inclusive Economic Growth, representing businesses, investors and nonprofits, all of whom are dedicated to prioritizing a set of necessary and long overdue structural reforms to our economy and capital markets that will help drive inclusive and equitable economic growth. Many of the undersigned organizations also plan to submit individual comments offering more technical recommendations, but we thought it important to share our collective support of the proposed rule, which we believe will ultimately better align fiduciary duty with beneficiaries’ best interests.

Importantly, this proposal also affirms the financial relevance of systemic risks posed by the climate crisis, as well as factors such as corporate governance and workforce practices. The specific examples

¹ U.S. Department of Labor, Financial Factors in Selecting Plan Investments,” 85 Fed. Reg. 72846 (November 13, 2020); Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,” 85 Fed. Reg. 81658 (December 16, 2020).

named in the proposed rule are valuable, but in light of the growing evidence that broad ESG considerations can often be financially material, the Department should consider how best to demonstrate to fiduciaries – through final regulation or subsequent guidance – how they can properly incorporate additional factors into investment considerations. In order to allow for some flexibility, the Department could consider mandating the creation of sustainable investment policies for fiduciaries to outline their own use of ESG factors and shareholder engagement as applicable to their investment strategy.

Lastly, we agree with the concern raised by the Department around the “regulatory game of ping pong” on this topic from administration to administration. We urge policymakers to consider what amendments could be made to the underlying statute to provide better certainty to market actors.

The undersigned organizations are encouraged by the Department’s leadership and believe this represents a significant step forward for ensuring that material ESG factors are appropriately considered in investment decisions that impact retirement savers.

Thank you for the opportunity to provide comment. We look forward to engaging throughout the rulemaking process.

Sincerely,

Members of the Coalition on Inclusive Economic Growth, including:

- | | |
|--|--------------------------------|
| 1worker1vote | Impact Capital Forum |
| B Lab US & Canada | Impact Capital Managers |
| Better Markets | Imperative 21 |
| Change Finance | Intentional Endowments Network |
| Coalition for Inclusive Capitalism | Omidyar Network LLC |
| Common Future | Opportunity Finance Network |
| Community Development Venture Capital Alliance | Pacific Community Ventures |
| Confluence Philanthropy | The Predistribution Initiative |
| The Drucker Institute | Rights CoLab |
| Florida for Good | Social Finance |
| Green America | U.S. Impact Investing Alliance |