

COMMENT LETTER

July 20, 2020

Joint Trade Letter Requesting Extension of Comment Period on DOL's ESG Proposal (pdf)

July 20, 2020 Filed Electronically: 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: Financial Factors in Selecting Plan Investments Proposed Regulation Re: RIN 1210-AB95; Financial Factors in Selecting Plan Investments Proposed Regulation Dear Sir or Madam: The American Bankers Association,ⁱ the Defined Contribution Institutional Investment Association,ⁱⁱ Insured Retirement Institute,ⁱⁱⁱ the Investment Adviser Association,^{iv} Investment Company Institute,^v the Securities Industry and Financial Markets Association,^{vi} and the SPARK Institute^{vii} write in response to the Department of Labor's ("Department's") proposed rule on Financial Factors in Selecting Plan Investments (the "Proposal").^{viii} We respectfully request a 30- day extension of the deadline for public comments on the Proposal, currently scheduled to end on July 30, 2020. The changes described in the Proposal are significant and demand comprehensive review in order to properly consider their impact on plan investments and current practices. We recognize the fact that the Department may believe that the Proposal does little more than reiterate ERISA's statutory fiduciary standards, "codify" existing sub-regulatory guidance and require actions that it believes plan fiduciaries should already be taking. To the contrary, however, we believe that the Proposal, as currently drafted, would make sweeping changes to current rules. It would not only make substantial changes to the application of ERISA to investments that incorporate environmental, social and governance (ESG) factors, but the changes made to the Investment Duties regulation also would have extensive impacts far beyond ESG investments. Employee Benefits Security Administration July 20, 2020 Page 2 of 3 The Proposal represents a major overhaul to DOL regulation section 2550.404a-1, which applies to a fiduciary's selection of all plan investments and has been in place since 1979. To help avoid unintended consequences that could include increased costs and burdens on fiduciaries for the selection of any plan investment, significant limitations on the investment choices of plan participants, and increased risk of litigation against plans, more than thirty days is needed for analysis. Proposed changes to this regulation have not received significant prior input. Unlike other proposals the Department has issued recently with a similarly short comment period (e.g., recent regulation on electronic delivery, RFI on multiple employer plans (MEPs) (including pooled employer plans or PEPs), and the proposed fiduciary prohibited transaction class exemption (Proposed PTE)), these changes have not been the subject of prior public comment. These other proposals build on longstanding public policy issues (multiple employer plans and investment advice) for which the Department has sought public input many times, whereas

the changes proposed here call for thoughtful consideration that takes time. The Department has never sought public input (nor input from the ERISA Advisory Council) on the question of financial factors in investment decisions. * * * * * For these reasons, we are requesting a 30-day extension of the comment period. The undersigned organizations believe that this extension would lead to more thoughtful and comprehensive input, which will ultimately result in improvements to the regulation that would benefit all parties. Thank you for your attention on this matter.

American Bankers Association
Defined Contribution Institutional Investment Association
Insured Retirement Institute
Investment Adviser Association
Investment Company Institute
Securities Industry and Financial Markets Association
SPARK Institute

cc: Jeanne Klinefelter Wilson, Acting Assistant Secretary
Joe Canary, Office Director, Office of Regulations and Interpretations
Jeffrey Turner, Deputy Director, Office of Regulations and Interpretations

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i The American Bankers Association is the voice of the nation's \$20.3 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$15.8 trillion in deposits and extend nearly \$11 trillion in loans. ii Founded in 2010, the Defined Contribution Institutional Investment Association (DCIIA) is a non-profit association dedicated to enhancing the retirement security of America's workers. To do this, DCIIA fosters a dialogue among the leaders of the defined contribution community who are passionate about improving defined contribution outcomes. DCIIA's diverse group of members include investment managers, consultants and advisors, law firms, record keepers, insurance companies, plan sponsors and other thought leaders who are collectively committed to the best interests of plan participants. For more information, visit: www.dciia.org. iii The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for 90 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community. Learn more at www.irionline.org. iv The IAA is the largest organization dedicated to advancing the interests of investment advisers registered with the Securities and Exchange Commission. For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than \$25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org. v The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$24.8 trillion in the United States, serving more than 100 million US shareholders, and US\$6.5 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC. vi SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy,

affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. vii The SPARK Institute represents the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third party administrators, trade clearing firms, and benefits consultants. Collectively, our members serve approximately 95 million employer-sponsored plan participants. viii See 85 Fed. Reg. 39113 (June 30, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13705.pdf>.

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