

July 15, 2020

Mr. Jason A. DeWitt
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Re: RIN 1210-AB95

Dear Mr. DeWitt,

I am submitting the following comment letter to express my support for the Department of Labor's recently proposed rule. This rule rightly reaffirms a fiduciary's obligation to prioritize financial returns over environmental, social, and governance (ESG) investment strategies in the management of ERISA-managed pension fund assets. As a former Treasurer of the State of Ohio and Mayor of Cincinnati, I have had firsthand experience overseeing a pension system and I take seriously the responsibility of a fund's management team to provide financial security to the men and women who dedicated their lives to protecting their neighbors and improving their communities.

As laid out in the [proposal](#), "ERISA plan fiduciaries may not invest in ESG vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of non-pecuniary objectives." I sit on the advisory board of the Institute for Pension Fund Integrity. Our own position, articulated in a 2018 white paper, is that "ESG investments should be made when they add value to a fund. When such investments will not improve the financial performance of the fund, or the decision to invest in them is based on political motives, they should be forgone."

Last November, SEC Chairman [Jay Clayton remarked](#) that a chief complaint to his organization "was the concern that [shareholders'] financial investments—including their retirement funds—were being steered by third parties to promote individual agendas, rather than to further their primary goals of being able to have enough money to lessen the fear of 'running out' in retirement or to leave money to their children or grandchildren."

[According to a study by the Pacific Research Institute](#), ESG funds were "43.9% smaller compared to an investment in a broader, S&P 500 index fund," after 10 years. As ESG strategies become more fashionable by the day, there is cause for concern that financial returns will be replaced by politics at the top of asset managers' considerations going forward.

A portfolio is not a "one size fits all" product. Some investors may be more than willing to shape their investment strategy around a political compass, as is their right, but when a single fund is responsible for the interests of hundreds of thousands of private pension holders who do not have

the ability to choose where their money goes, those in charge have an obligation to advance the financial interests of their clients first and foremost.

Pensions should be, and once were, apolitical entities. At the Institute for Pension Fund Integrity, we are singularly focused on that objective—getting the politics out of pensions and protecting the financial security of America’s workforce. I applaud the Department of Labor’s efforts to further codify the most basic tenet of fiduciary duty: investment decisions should be governed by considering risk and returns, not the political agenda of a third party. As I noted in an [article](#) for the *Washington Times*, “public pension funds are already underfunded and underperforming.” Let us not exacerbate the issue by appeasing the special interest groups to the detriment of private sector labor workers and retirees across the country.

While this rule is a major step in the right direction, its language can be improved - specifically with regard to the issue of proxy voting in shareholder proposal considerations. The proxy system has long been taken advantage of by outside actors without fiduciary responsibilities, preventing sound advice from reaching the nation’s pension and investment funds and retail shareholders. There is currently a duopoly in the system, in which two companies, Institutional Shareholder Services (ISS) and Glass Lewis, control the overwhelming majority of the proxy advisory market. Unfortunately, the advice presented by these institutions is often intended to promote certain causes rather than maximizing investment returns for their clients. The final rule should include language that ERISA fiduciaries must not use resources to engage in ESG-related proxy voting or shareholder activism if these actions do not strengthen the monetary value for beneficiaries.

Pension fund managers need to be reminded that they are charged with acting on behalf of individuals who sacrificed a portion of their wages every payday with the expectation that their money would be handled with care, not used to promote the interests of political actors.

The proposed rule change is an important step towards fulfilling these obligations.

Sincerely,

Ken Blackwell
Former Treasurer and Secretary of State of Ohio
Former Mayor of Cincinnati