O'Connor CARES Solutions, LLC

July 22, 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

Mr. DeWitt,

I am writing to express my support for the adoption of the Employee Benefits Security Administration's proposed rule concerning the evaluation of financial factors in tax-qualified retirement plans governed by the Employee Retirement Income Security Act (ERISA). The Department of Labor should be applauded for its efforts to address the improper promotion of non-pecuniary goals in pension plans by fiduciaries, specifically surrounding the increasing prevalence of Environmental, Social, and Governance (ESG) factors in investments.

Through my previous work with the Baltimore County Employees Retirement System as well as the International Association of Fire Fighters (IAFF), I have seen firsthand how many of our public servants, who have already dedicated their lives to benefit our common good, have been forced to confront years of mismanagement and political gamesmanship with their retirement plans. In 2018, I wrote that "it is nothing new for firefighters and the unions that represent their interests to be at loggerheads with jurisdictions over money and benefits…The increasing challenge is the external pressures and forces from outside entities that are imperiling our retirement benefits."

The growing push for ESG-driven investment strategies has targeted ERISA-regulated funds, including private and multi-employer pensions, the same way activists have pushed fund managers to incorporate it into management of public pensions. With unfunded liabilities growing, now is not the time to buck investments proven to deliver maximized returns in place of underperformance and growing funding gaps. Some have shown that these ESG funds produce over 40-percent less in returns than standard index funds.

Unless these funding gaps are addressed, future beneficiaries will be shortchanged in their retirement. Because of this, maximizing returns while moderating risk must be the top priority for pension fund managers. In these trying times, the least that we can do for beneficiaries is to ensure that their fund managers are guided solely by their fiduciary obligations, not any other politically motivated agenda. Even if these plans were all fully funded, injecting politics into their management would still be a gross violation of fiduciary standards.

1750 New York Avenue, N.W Washington D.C 20006 | 202.549.6324 | 410.923.1414
191 Main Street, Suite 210, Annapolis, MD 21401 | www.oconnorcares.com

This proposed rule comes in the wake of guidance on ESG investment that the Department of Labor has been developing over time and would serve as necessary guidance for ERISA-managed retirement plan beneficiaries needed to ensure the proper oversight of retirement funds. In recent years, ESG principles and ESG-focused investment products have gained traction among investors, due in large part to outside pressure from individuals seeking to boost specific political or environmental goals. While individual investors, endowments, and corporations should be free to pursue whatever investment strategy they see fit based on their needs, the unique nature of pension funds requires that fund managers steer clear of any political agenda. As stated in the proposed rule, "it is unlawful for a fiduciary to sacrifice return or accept additional risk to promote a public policy, political, or any other nonpecuniary goal."

If returns from ESG-focused investments were shown to be comparable to more traditional investment strategies, the debate over fiduciary duty in investing (or lack thereof) would be less pressing. However, there is evidence that such products do not come anywhere close to maximizing returns for beneficiaries compared to others without unnecessary restrictions. In addition to the Pacific Research Institute study that showed ESG funds trail others by 43.9 percent, a recent analysis in Bloomberg demonstrated that the iShares MSCI USA ESG Select Social Index Fund (SUSA), one of the most prominent ESG-focused exchange traded funds on the market, consistently underperformed the S&P 500 index by 37 points over ten years. This trend is reflected in comparisons of investment products across the board. At BlackRock, the world's private asset manager, the Clean Energy ETF has underperformed the Growth ETF by more than ten percentage points for the last five years.

It is high time that ERISA was modernized in order to set in stone the underlying fiduciary principles that have been the cornerstone of responsible pension management. Under ERISA, fiduciaries must make investment decisions based solely on whether they are beneficial to retirement savings. Labor Secretary Eugene Scalia put it best in his recent defense of the proposed rule when he noted that "at the heart of ERISA is the requirement that plan fiduciaries act with an 'eye single' to funding the retirements of plan participants and beneficiaries. This means investment decisions must be based solely on whether they enhance retirement savings, regardless of the fiduciary's personal preferences." As pension fund managers are confronted with increasing outside pressure to veer from this agenda, the obligations of the Department of Labor could not be clearer.

It is with great anticipation that I await the Department of Labor's final determination for this rule.

Best Regards,

Kevin B. O'Connor