



July 30, 2020

California State Teachers'
Retirement System
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VIA ELECTRONIC FILING

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: RIN 1210-AB95, [Financial Factors in Selecting Plan Investments Proposed Rule](#) –
Amend certain provision of investment duties, Regulation at 29 CFR 2550.404a-1

Dear Assistant Secretary Wilson,

I am writing on behalf of the California State Teachers' Retirement System ("CalSTRS"). CalSTRS was established for the benefit of California's public-school teachers over 100 years ago and is the largest educator-only pension fund in the world, with a global investment portfolio valued at approximately \$246 billion¹. We serve the investment and retirement interests of more than 965,000 plan participants and their beneficiaries. The long-term nature of CalSTRS liabilities, and our responsibility as a fiduciary to our members, make the fund keenly interested in the rules and regulations that govern the securities market.

Consistent with CalSTRS' fiduciary responsibility to our members, the Teachers' Retirement Board has a responsibility to ensure the corporations and entities in which we invest strive for long-term sustainability in order to achieve the long-term rate of return to meet our beneficiary obligations. To help manage these risks, the board developed its Investment Policy for Mitigating Environmental, Social and Governance (ESG) Risks.

The CalSTRS ESG Risk Policy identifies ESG-related risks that could materially impact the value of the Investment Portfolio. These risks could impact a particular asset category, sector, geographic region, or the markets. Every CalSTRS portfolio manager, whether internal or external, is expected to consider these ESG risks when making investment decisions on behalf of the fund. CalSTRS believes that, in addition to traditional financial metrics, timely consideration of material environmental, social, and governance (ESG), factors in the investment process for every asset class, has the potential, over the long-term, to positively impact investment returns and help to better manage risks.

We appreciate the opportunity to provide our comments on the Employee Benefits Security Administration's proposed rule *Financial Factors in Selecting Plan Investments*, Regulatory

¹ [California State Teachers Retirement System, Current Investment Portfolio as of June 30, 2020](#)

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Identifier Number (RIN) 1210-AB95 (“Proposal” or “NPR”). Given our proven experience with implementing and carrying out our ESG Risk Policy, we strongly urge that the Department of Labor (DOL) not adopt the proposed rule, as we believe it provides inadequate evidence on the need for change and would unduly burden fiduciaries with no commensurate benefit. Additionally, given the potential for significant burden and confusion we would ask that you provide an extension of the comment period from 30 days to 90 days.

Evidence

We note the DOL describes the purpose of the Proposed Rule *“to set forth a regulatory structure to assist ERISA fiduciaries in navigating these ESG investment trends and to separate the legitimate use of risk-return factors from inappropriate investments that sacrifice investment return, increase costs, or assume additional investment risk to promote non-pecuniary benefits or objectives.”*

Given the stated purpose of the Proposed Rule, one might expect the DOL to more clearly define what specific types of ESG investment trends it is concerned about and provide evidence that ERISA fiduciaries are making those investments on the basis of non-pecuniary criteria. Instead, the DOL shares two qualified “concerns” as evidence for the Proposed Rule. Despite the aim of providing clarity for ERISA fiduciaries, the Proposal states an unsubstantiated position that in turn creates confusion for ESG investors.

The Proposal states that an ERISA fiduciary has fulfilled its obligations if they have *“selected investments and/or investment courses of action based solely on pecuniary factors.”* It goes on to state that, *“ESG factors and other similar factors may be economic considerations.”*

A substantial body of evidence demonstrates that ESG issues pose short, medium- and long-term financial impacts and risks to companies and financial markets. The Sustainability Accounting Standards Board (SASB) found ESG issues that were likely to be material in each of the 77 industries that it covers, with an average of six ESG topics for each industry.² In many cases, a particular ESG issue is material to many industries. For instance, SASB found climate change is likely to be material in 72 out of 77 industries, equating to 93% of the U.S. equities by market capitalization.³ A focus on ESG investment seeks to quantify risks that cannot be fully measured by traditional financial metrics but can affect financial performance.

A policy by the DOL, clarifying that fiduciaries must integrate material factors into their investment actions, including material ESG factors, would be more appropriate. CalSTRS specifically integrates ESG factors into our investment decision-making because we think they are financially material and, foremost, because we have an obligation to our plan participants as long-term stewards of their capital. ESG considerations are a fundamental and integrated part of our guiding Investment Beliefs and our investment process.

² SASB, *Response of the Sustainability Accounting Standards Board to the Public Consultation on the Revision of the Non-Financial Reporting Directive* at 5 (<https://www.sasb.org/wp-content/uploads/2020/06/SASB.NFRDWhitepaper.FINAL-005.pdf>).

³ SASB, *Climate Risk Technical Bulletin*, October 2016 at 8-9 (<https://www.sasb.org/knowledge-hub/climate-risk-technical-bulletin/>).

The “all else being equal test”

We are concerned that the NPR creates new burdens for fiduciaries using the “all else being equal test” that would lead to unnecessary costs for plan participants. Under the “all else being equal test,” which has been in place since 1994, fiduciaries may select an investment that provides additional benefits only after they have determined that the risk and return profile of that investment is substantially similar to that of competing options.

The Proposed Rule goes on to provide the following quantification of the anticipated additional costs:

The Department estimates that plan fiduciaries and clerical staff will each expend, on average, 2 hours of labor to maintain the needed documentation. This results in an annual burden estimate of 600 hours, with an equivalent cost of \$56,818 for DB plans and DC plans with ESG investments that are not participant directed.

We believe the DOL’s estimated costs of complying with the new documentation requirements are significantly understated. On this point, we share the following reported views of Chantel Sheaks, the U.S. Chamber of Commerce’s retirement policy director, as referenced in a Bloomberg article:

The Labor Department missed the mark on this one, in Sheaks’ opinion. “The DOL has created more of a problem than what existed,” she said, poking holes in the administration’s projected compliance costs (about \$57,000) and the time required (two hours) for the additional record keeping. “Anyone who spends that little time likely would have breached their fiduciary duty with respect to a plan’s investment,” she said. “The DOL also ignores that plans will need to seek legal review of such documentation which will add significantly to the cost.”⁴

With a need for significant additional time, legal review, and costs, the Proposal raises questions about whether fiduciaries would ever have the opportunity to select between multiple investment options.

Comment Period

We encourage the DOL to provide additional time to collect information in order to ensure that the Department and practitioners have a shared understanding of the impact of the rule and how fiduciaries will be required to act in response to it.

Specifically, we are concerned that 30 days is insufficient due to pandemic-related productivity challenges, economic challenges, and asset price volatility that asset owners and investors are trying to manage. We believe that 90 days will provide a reasonable opportunity for interested parties to submit comments on this important matter.

⁴ Bloomberg Law, *Legal Battles Likely Over Trump’s ESG Crackdown, Advisers Say*, June 24, 2020 (<https://news.bloomberglaw.com/employee-benefits/legal-battles-likely-over-trumps-esg-crackdown-advisers-say>).

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Summary

In summary, we urge the DOL to allow the existing regulations to stand without the proposed amendments. If the Proposal is finalized with these amendments, fiduciaries will struggle to fulfil their obligations to deliver optimal returns by integrating all financially material risk factors which have been repeatedly proven to be pecuniary. Given the significant increased documentation requirements and uncertain effect of this proposed rule change we recommend an extension of the comment period to 90 days in order to allow the DOL to gather as much information as possible.

Thank you for the opportunity to provide CalSTRS' perspective on this proposal. If you have any questions, please contact me directly at amastagni @calstrs.com.

Sincerely,

A handwritten signature in blue ink that reads "Aisha Mastagni". The signature is written in a cursive, flowing style.

Aeisha Mastagni

Portfolio Manager, Sustainable Investment and Stewardship Strategies
California State Teachers' Retirement System

CC: Jack Ehnes, CEO

Chris Ailman, CIO

Brian Bartow, General Counsel