



**December 13, 2021**

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**Mr. Ali Khawar**

**Acting Assistant Secretary**

Employee Benefits Security Administration, Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

**Re: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (RIN 1210-AC03)**

Dear Mr. Khawar,

The Institutional Limited Partners Association (ILPA) appreciates the opportunity to comment on proposed rule RIN 1210-AC03.<sup>1</sup> ILPA serves over 570 institutional investors representing in excess of US\$2 trillion in private market assets. Our membership includes limited partners directly governed by ERISA, in addition to state, county and municipal public retirement systems governed by laws that are modeled on the ERISA framework. The comments which follow are focused exclusively on defined benefit plan investment in the private markets and do not reflect a position on those issues related to public markets or defined contribution plans.

**I. ILPA supports ERISA fiduciaries considering ESG factors as part of the investment process**

ERISA fiduciaries have, in practice, considered environment, social and governance factors in their investment decision-making processes for many years because the business risks and opportunities associated with these issues can and do have a material impact on investment performance. Identifying, analyzing and weighting ESG factors is an inherent ingredient in making sound, long-term investment choices on behalf of plan beneficiaries. For example, worker safety as viewed through the lens of operational efficiency, cost savings, improved employee satisfaction and regulatory compliance (the "S" in ESG). Similarly, the presence of sound corporate policies and management oversight as a determinant of investor transparency and ethical business practices (the "G" in ESG). ILPA views the proposed rule as being consistent with and supportive of what has already become established best practice for investment due diligence in private markets.

Beyond the historical context outlined above, there is a growing body of research which points to a correlation between ESG factors, value creation and realized investment results. While further work remains before any conclusions can be drawn specific to private markets, the connection between

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<sup>1</sup> U.S. Department of Labor, Employee Benefits Security Administration, Notice of Proposed Rulemaking: *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 86 Fed. Reg. 57272 (October 14, 2021).

effectively addressing ESG issues and company performance has undoubtedly become stronger in recent years, particularly in regard to evaluating downside investment risk.<sup>2</sup>

## **II. ILPA believes the tie-breaker standard should be eliminated**

The “tie-breaker” concept in the proposed rule does not reflect the reality of investment due diligence and presents a slippery slope which could lead to the consideration of “collateral benefits” and thereby weaken the focus on generating the best possible financial outcomes for beneficiaries. ILPA strongly believes this section should be removed in its entirety from the final rule, as opposed to clarifying the concept, in order to avoid the risk of non-financial variables influencing decision-making.

The proposed rule represents an important opportunity to clarify and codify the ways in which ESG is further integrated with private markets investment programs. ILPA would welcome a further dialogue with the ESBA on the comments included herein. In case of questions or to request additional information, please contact ILPA’s Senior Policy Counsel, Chris Hayes, at [chayes@ilpa.org](mailto:chayes@ilpa.org).

Sincerely,



**Steve Nelson**

Chief Executive Officer

**Institutional Limited Partners Association (ILPA)**

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<sup>2</sup> See Guido Giese, Linda-Eling Lee, Dimitris Melas, Zoltan Nagy, and Laura Nishikawa, *Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance*, THE JOURNAL OF PORTFOLIO MANAGEMENT, Vol. 45, No. 5 (July 2019), available at: <https://www.msci.com/documents/10199/03d6faef-2394-44e9-a119-4ca130909226>; see also Jeff Dunn, Shaun Fitzgibbons, and Lukasz Pomorski, *Assessing Risk Through Environmental, Social and Governance Exposures*, JOURNAL OF INVESTMENT MANAGEMENT, Vol. 16, No. 1 (2018), available at: <https://www.aqr.com/Insights/Research/Journal-Article/Assessing-Risk-through-Environmental-Social-and-Governance-Exposures>.