AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

June 10, 2021

SUBMITTED VIA EMAIL to rule-comments@sec.gov

The Honorable Allison Herren Lee, Acting Chair
U.S. Securities and Exchange Commission
100 F Street, NE Washington, DC 20549

Re: Request for Comment on Climate Change Disclosures

The American Retirement Association (ARA) is pleased to respond to the Securities and Exchange Commission's (SEC's) request for input on climate-related financial disclosures, issued by Acting Chair Allison Herren Lee on March 15, 2021.[1] The ARA supports the SEC's review of disclosures relating to climate change-related information on investments. We believe that financial disclosures play an important role in meeting the needs and demands of retirement plan investors.

As discussed in detail below, investing that considers financial return and climate change disclosures, as well as sustainability in the categories of social and governance factors (together, ESG Investing), is a large and growing part of retirement plan investing. Correspondingly, investor demand for consistent, comparable, reliable disclosure of material information on ESG Investing is increasing. Like any investors, many retirement plan investors consider disclosures about ESG-related risks, uncertainties, impacts, and opportunities as material, if not central, to their decision-making about investments.

The ARA urges the SEC to:

- **Conclude that clear, consistent information about climate change which investors of all types can easily understand and compare is essential.**

- **Develop disclosure requirements which account for the widest array of investors, consistent with the SEC's mission and in the best interest of the overall health of the financial markets.**

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), the American Society of Enrolled Actuaries (ASEA), and the Plan Sponsor Council of America (PSCA). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement

[1] https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

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saving plans and are dedicated to expanding on the success of employer sponsored plans. In addition, ARA has nearly 31,000 individual members who provide consulting and administrative services to the sponsors of retirement plans. ARA and its underlying affiliate organizations are diverse but united in their common dedication to the success of America's private retirement system including safeguarding the interests of participants and beneficiaries in retirement savings plans.

The Legal Landscape for Employer-Sponsored Retirement Plans

The Employee Retirement Income Security Act of 1974 (ERISA) is a Federal law that sets standards for retirement plans of employers in private industry. ERISA was enacted to protect the interests of employee benefit plan participants and their beneficiaries. The fiduciary standard in ERISA has long been recognized as the "highest known to law," both stringent and broad in its reach. ERISA fiduciaries are subject to duties of prudence and loyalty – requiring them to act solely in the interests of plan participants and beneficiaries, for the exclusive purpose of providing benefits.

ESG Investing which may generate "socially desirable" results may be considered prudent for ERISA purposes so long as the choice to make or retain such investments can be justified solely based on material financial factors.[2] Under ERISA, this means that fiduciaries of ERISA plans must evaluate investment options based upon material financial factors. ERISA fiduciaries must review all relevant information about an investment, including prospectuses and marketing materials of investment managers. Similarly, such disclosures may be material to investment decisions made by individual retirement plan investors who direct the investment of their own accounts.[3] Indeed, ERISA rules require the provision of the prospectus to the individual plan investor upon request. The ARA believes that these documents must be understandable as to ESG Investing, at both the plan level and the individual participant level.

Clear, Comprehensible Disclosures

The ARA strongly believes that climate-related disclosures should provide clear and comprehensible information relating to whether an investment presents a material risk or

[2] An ERISA regulation promulgated in 2020 by the prior Presidential administration generally describes such factors as those "that a fiduciary prudently determines is expected to have a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the [plan's] funding policy.") The regulation is under review by the current administration in connection with an Executive Order that directed the Secretary of Labor to reconsider rules that that would have barred consideration of ESG factors.

[3] Many employers sponsor retirement plans to their employees to which the employees can make contributions to accounts through automatic payroll withholding, and their employers can match some or all of those contributions. In many of such plans, the employees are also responsible for choosing the specific investments within their accounts, from a selection their employer offers or through an open brokerage window.

opportunity. Information should be presented in a manner that is suitable for all investors, including unsophisticated investors and their advisors. Disclosures should provide investors with consistent information that is decision-useful for investing and voting for ERISA fiduciaries, that is sufficient for carrying out their required duties, which necessarily includes comparing material financial factors. Moreover, comprehensible disclosures facilitate the benchmarking of investments' performance, risk, and impact, an essential task of ERISA fiduciaries.

A standardized metric or rating that communicates an issuer's climate performance would most effectively enable a wide range of investor types to incorporate these criteria into their investment decisions. A disclosure framework that produces only highly technical securities information without simple, comparable, and reliable information would be of limited utility to many retirement plan investors. The ARA recognizes that the SEC primarily may be considering financial disclosure requirements regarding climate information that are technical in nature. Dense disclosures may be a necessary evil of publicly-offered securities, but too much complexity discourages the participation of much of the investing public. While we acknowledge that nuance may be lost with simplified disclosures, the consistency and convenience of simplified assessment regarding an issuer's climate (and/or other ESG factors) performance would most effectively empower the greatest number of investors to incorporate appropriate criteria in their own investment decisions should they desire. Overall, facilitating the inclusion of the widest array of investors is both consistent with the SEC's mission and in the best interest of the market's overall health.

Finally, the ARA believes that responsibility for developing a disclosure framework for ESG Investing should be vested in a government entity, as opposed to an industry-led entity. Some private investment ratings services already produce ESG ratings, reflecting demand for accessible climate information not yet provided by federal regulators. But their numerosity and inconsistency generate unneeded complexity for retirement market participants. Placing this important undertaking in the hands of the government will best ensure the advancement of efficient, sound, universal standards.

Conclusion

ARA is committed to enhancing the retirement security of America's workers, which involves assisting an array of ERISA plan investors, including unsophisticated investors vulnerable to complicated disclosures. The ARA believes that:

- **The SEC should conclude that clear, consistent information about climate change which investors of all types can easily understand and compare is essential.**

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- **The SEC should develop disclosure requirements which account for the widest array of investors, consistent with the SEC's mission and in the best interest of the overall health of the financial markets.**

The ARA very much appreciate the SEC's commitment to its mission**.** We look forward to working with the SEC on this important issue. We would welcome the opportunity to discuss these issues further with you. Please contact Brian Graff, CEO, American Retirement Association at [redacted] or at [redacted]

Thank you for your time and consideration.

Sincerely,

/s/ Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/ Allison Wielobob
General Counsel
American Retirement Association