CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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Office of Regulations and Interpretations
Employee Benefits and Security Administration
United States Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

To Whom It May Concern:

The U.S. Chamber of Commerce ("the Chamber") appreciates this opportunity to comment on the proposal from the Department of Labor (DOL) regarding the investment duties of plan fiduciaries under the Employee Retirement Income Security Act of 1974, as amended (ERISA). (Proposal)

The Chamber supports the DOL's efforts to clarify through formal notice and comment rulemaking the duties of prudence and loyalty in the context of a fiduciary's investment duties. In addition to amending the current regulation relating to investment duties, the Proposal also includes standards relating to investments that include environmental, social, governance (ESG) or other similarly oriented considerations, which have been the subject of several iterations of subregulatory guidance for more than 25 years. During the same period, interest surrounding investments that integrate consideration of ESG matters into the overall process has only grown. Establishing a regulatory framework through a formal rulemaking is an appropriate step that will help provide certainty to plan fiduciaries, participants and beneficiaries.

The Chamber supports the underlying principle of the Proposal with respect to the duties of prudence and loyalty. However, as the DOL goes forward with this initiative, we want to ensure that any potential unintended consequences that could result in unnecessary costs, administrative burdens and litigation exposure for plan sponsors and fiduciaries are addressed. We believe that certain changes to the Proposal can and should be made without compromising the underlying goal, which is that a fiduciary may not subordinate participants' and beneficiaries' interest to the fiduciary's interest.

Background

The first formal private pension in the United States dates to the American Express plan in 1875,[1] and many employers in transportation and utilities followed suit in establishing their own pension plans. However, there were no federal laws governing these plans, and they were "regarded as nonbinding expressions of the employer's present intent to make a future gift to aged employees."[2] Federal regulation of pension plans was first through the Internal Revenue Code (IRC) addressing such issues as individual taxation and later requiring plan assets to be held in trust for the exclusive benefit of employees and that such assets could not revert to the employer until all liabilities were satisfied.[3]

By the 1960s, the consensus was that the IRC and the patchwork of state laws did not adequately protect participants and beneficiaries. The classic example is the Studebaker Company bankruptcy, where, although the company had followed all then-existing laws and tax-qualification requirements, many employees lost their pensions because there were no funding or vesting rules and no federal backstop to insure the benefits.[4]

Although legislative efforts started in 1963 soon after the Studebaker bankruptcy, it was not until 1974 that ERISA was passed into law as a comprehensive federal statute regulating employee benefit plans. Notable among its provisions are the vesting and eligibility requirements for pension and retirement plans, the reporting and disclosure requirements, the creation of the Pension Benefit Guaranty Corporation to insure defined benefit plan benefits, and the comprehensive fiduciary standards and liabilities for people who administer plans and invest plan assets.

The popularity of ESG investments has grown in recent years. A June 2018 survey of institutional asset owners, including public plans and endowments, found that worldwide more than $22.8 trillion is invested "sustainably," which the survey defines as "investments made in companies or funds achieving market-rate financial returns while at the same time pursuing positive social or environmental impact."[5] This represents roughly 25% of all investments that are under professional management, not just ERISA plan fiduciaries. Additionally, the survey found that 84% of asset owners are actively considering incorporating ESG criteria into to their investment processes, with nearly half already doing so.

As the DOL notes in the preamble, "[a]s ESG investing has increased, it has engendered…inconsistencies, with numerous observers identifying a lack of precision and rigor

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[1] For a more comprehensive history of pension and retirement plans and legislation, see "A Timeline of the Evolution of Retirement in the United States," Workplace Flexibility 2010, Georgetown University Law Center available at https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1049&context=legal.
[2] LEWIS, RUMELD, LEBEAU, EMPLOYEE BENEFITS LAW, p. 1-2 (Third Ed. Bloomberg BNA 2012).
[3] See IRC § 165(a)(2) (1939).
[4] LEWIS at I-9.
[5] The Morgan Stanley survey polled 118 public and corporate pensions, endowments, foundations, sovereign wealth funds, insurance companies, and other large asset owners worldwide. The full study is available at https://www.morganstanley.com/ assets/pdfs/sustainable-signals-asset-owners-2018-survey.pdf.

in the ESG marketplace. There is no consensus about what constitutes a genuine ESG investment, and ESG rating systems are often vague and inconsistent…" [6]

These concerns have also been raised recently by Securities and Exchange Commission (SEC) Commissioners Hester Peirce and Elad Roisman,[7] and have led the Chamber to call for more consistent and market-based ESG reporting standards.[8]

This is not to say that investors should never invest in ESG-labeled funds or incorporate certain ESG criteria into their investment decisions. For example, it is undeniable that issues surrounding climate change are material to a large number of companies and reasonable investors would take them into account when choosing investments. Governance matters are also core considerations that affect the long-term performance of any company. We also acknowledge that many investment managers make use of ESG factors in a positive manner, as additional tools intended to drive strong returns and/or reduce risk by bolstering other, more traditional forms of analysis. At the same time, it is important to make sure that there is a correlation with economic return and the ESG investment.

Duties Under ERISA

Under ERISA, plan fiduciaries must:

> discharge [the fiduciary's] … duties with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> > (A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan;
> >
> > (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent …[person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.[9]

These provisions are known as the duty of loyalty and the duty of prudence. The duty of prudence consistently has been interpreted as requiring a prudent process, but not as requiring a specific process or necessarily a specific outcome.[10] ERISA's legislative history shows that the

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[6] 85 Fed. Reg. 39113, 39115 (June 30, 2020)

[7] Keynote Speech at the Society for Corporate Governance National Conference – Commissioner Elad Roisman (July 7th, 2020); My Beef With Stakeholders: Remarks at the 17th Annual SEC Conference, Center for Reporting and Governance – Commissioner Hester Peirce (September 21st, 2018).

[8] https://www.uschamber.com/series/above-the-fold/us-chamber-backs-more-consistent-environmental-social-reporting-corporations

[9] 29 U.S.C. § 1104(a).

[10] See Donovan v. Mazzola, 716 F.2d 1126, 1232 (9th Cir. 1983) (whether the action is prudent is whether the fiduciaries "at the time they engaged in the challenged transactions, employed the appropriate methods to investigate the merits of the investment and to structure the investment."); see also *Martin v. CareerBuilder*, No. 19-cv-6463, 2020 WL 3578022 , at *4 (N.D. Ill. July 1, 2020) ("Importantly, the prudence standard is processed-based, not outcome-based.")

duty of prudence "was to ensure that it would not be necessary to apply a single rigid rule or standard to all employee benefit plans."[11]

The duty of loyalty is separate from the duty of prudence. The duty of loyalty is aimed at whether the fiduciary acted in the participants' and beneficiaries' interest rather than the fiduciary's. An investment may not be prudent, but it does not necessarily mean that a fiduciary breached its duty of loyalty.[12] Furthermore, the duty of loyalty recognizes that, unlike the law of trusts, ERISA allows a plan fiduciary to wear two hats, meaning that a plan fiduciary may also have another role that potentially is in conflict with their role as fiduciary.[13] This doctrine requires "that the fiduciary with two hats wear only one at a time, and wear the fiduciary hat when making fiduciary decisions."[14]. However, a fiduciary will not be held liable under ERISA where it acts in a non-fiduciary capacity and there is a collateral impact on employee benefit plans[15] or where its actions may have had an incidental benefit on the employer.[16]

ERISA provides an exception for fiduciary liability for investment losses under ERISA Section 404(c) where an individual account plan permits participants and beneficiaries to exercise control over the assets of the person's account and the person exercises such control. In this case, the participant or beneficiary is not considered a fiduciary and no other fiduciary is liable for any loss that results from the exercise of control. Although this section was originally part of ERISA as enacted in 1974, the DOL did not finalize regulations under this section until 1992.[17]

Over the years, the DOL has issued subregulatory guidance relating to economically targeted investments (ETI) and ESG considerations as follows:

- Interpretive Bulletin 1994-1 (IB 94-1) provided that ERISA does not prohibit a plan fiduciary from investing plan assets in an otherwise appropriate ETI if the expected rate of return is commensurate to rates of return of alternative investments with similar risk characteristics available to the plan. The DOL noted that it "has stated that a plan fiduciary may consider collateral benefits in choosing between investments that have comparable risks and rates of return." This was later referred to as the "tie-breaker" rule.

- Interpretive Bulleting 2008-01 (IB 08-01) modified and superseded IB 1994-1 and clarified "through explanation and examples, that fiduciary consideration of noneconomic factors should be rare and, when considered, should be documented in a manner that

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[11] James D. Hutchinson, "The Federal Prudent Man Rule under ERISA", 22 Vill. L. Rev. 15, 26 (1976). Available at: https://digitalcommons.law.villanova.edu/vlr/vol22/iss1/2

[12] See Sacerdote v. New York University, 2017 WL 3701482, at *5 (S.D.N.Y. Aug. 25, 2017) (citing Restatement (Third) of Trusts § 78 (2007) ("a plaintiff must do more than simply recast purported breaches of the duty of prudence as disloyal acts").

[13] For a discussion of the "two hats" doctrine see Melissa Elaine Stover, Maintaining ERISA's Balance: The Fundamental Business Decision v. The Affirmative Fiduciary Duty to Disclose Proposed Changes, 58 Wash. & Lee L. Rev. 689 (2001), https://scholarlycommons.law.wlu.edu/wlulr/vol58/iss2/8

[14] Pegram v. Herdrich, 530 U.S. 211, 225 (2000).

[15] For example, an employer can "take actions to the disadvantage of employee beneficiaries, when they act as employers (e.g., firing a beneficiary for reasons unrelated to the ERISA plan), or even as plan sponsors (e.g., modifying the terms of a plan allowed by ERISA to provide less generous benefits)." Pegram, 530 U.S. at 225.

[16] Lockheed v. Spink, 517 U.S. 882, 893(1996)

[17] See 57 Fed. Reg. 46932 (Oct. 13, 1992).

demonstrates compliance with ERISA's rigorous fiduciary standards." IB-08-01 further stated that "before selecting an economically targeted investment, fiduciaries must have first concluded that the alternative options are truly equal, taking into account a quantitative and qualitative analysis of the economic impact on the plan."

- In a 2015 Interpretive Bulletin, the DOL withdrew IB 08–01 and replaced it with Interpretive Bulletin 2015–01 (IB 2015-01). IB 2015-01 reinstated the language of IB 94–01. Noting that DOL believed that IB "2008–01 has unduly discouraged fiduciaries from considering ETIs and ESG factors." In addition, IB 2015-01 stated that "[e]nvironmental, social, and governance issues may have a direct relationship to the economic value of the plan's investment. In these instances, such issues are not merely collateral considerations or tie-breakers, but rather are proper components of the fiduciary's primary analysis of the economic merits of competing investment choices."

  Field Assistance Bulletin 2018-01 provides guidance to the Employee Benefits Security Administration's national and regional offices for questions from plan fiduciaries on Interpretive Bulletin 2015-01 relating to ETIs, ESG factors, and other matters. "Fiduciaries must not too readily treat ESG factors as economically relevant to the particular investment choices at issue when making a decision. It does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors. … A fiduciary's evaluation of the economics of an investment should be focused on financial factors that have a material effect on the return and risk of an investment based on appropriate investment horizons consistent with the plan's articulated funding and investment objectives."

This prior subregulatory guidance provides important context in considering many aspects of the Proposal. It amends 29 C.F.R. Section 2550-404a-1 (Investment Duties), which was finalized in 1979 and created a safe harbor so that "fiduciaries who comply with the provisions of the regulation will have satisfied the requirements of the 'prudence' rule…."[18] The Proposal also amends 29 C.F.R. Section 2550-404a-1 to include the "tie-breaker" rule and documentation requirements and specifics related to investment alternatives for participant directed accounts under ERISA section 404(c) with respect to ESG investments.

Analysis

1. Clause 2550-404a-1(b)(1)(ii)

The Chamber supports the principle in the Proposal that a fiduciary is required to evaluate "investments and investment courses of action based solely on pecuniary factors that have a material effect on the return and risk of an investment." This has long been the standard that Chamber members have applied in carrying out their fiduciary duty under ERISA when investing plan assets, regardless of the type of investment.

[18] 44 Fed. Reg. 37221, 37222 (June 26, 1979).

2. Clauses 2550-404a-1(b)(1)(iii) and (iv)

The Proposal combines both the duty of loyalty and the duty of prudence into one requirement by adding subparagraphs (iii) and (iv) to paragraph (b)(1). Because these are separate duties and a breach of one is not necessarily a breach of the other, we suggest redesignating any standards relating to the duty of loyalty as a separate section. For example, the provisions relating to the duty of loyalty can be redesignated as paragraph (c), and the remaining paragraphs adjusted accordingly.

Clause (iii) would require that a fiduciary not subordinate the interests of participants and beneficiaries in their retirement income or financial benefits[19] under the plan to unrelated objectives, or sacrifice investment return or take on additional investment risk to promote goals unrelated to those financial interests of the plan's participants and beneficiaries or the purposes of the plan." Clause (iv) would require that a fiduciary not "otherwise acted to subordinate the interests of the participants and beneficiaries to the fiduciary's or another's interests."

It is well established that an ERISA fiduciary may not subordinate the participants' or beneficiaries' interest to the fiduciary's interest while the fiduciary is acting in a fiduciary capacity. Subparagraph (iv) is sufficiently broad to encompass that duty and to protect participants and beneficiaries. As such, subparagraph (iii) is unnecessary, and it would likely have unintended consequences by making many common, accepted, and generally beneficial practices suspect, such as the use of proprietary products, fee sharing and fee aggregation. It also could encourage litigation[20] by having the plaintiffs' bar second guess whether a decision is solely for the financial benefit of participants and beneficiaries (regardless of the collateral impact or incidental benefit rule) or whether the selection of one investment over another sacrificed investment returns (including the use of revenue sharing to obtain lower fees).

With respect to clause (iv), we suggest that the DOL clarify the language by replacing it with the following: "a fiduciary may not subordinate the interests of participants and beneficiaries as to any other interests of the participants, beneficiaries, the fiduciary itself or any other party."

3. Subparagraph 2550-404a-1(b)(1)(iii)(D)

Under the current regulation, a fiduciary is required to give appropriate consideration to investment decisions. Appropriate consideration is defined as consideration of diversification, liquidity and projected returns as they relate to the portion of the portfolio of the investment. The proposal amends the definition of appropriate consideration by adding a new subparagraph (D)

[19] As demonstrated by the Supreme Court, with respect to a defined benefit plan, participants and beneficiaries do not have financial interest in the plan other than the contractual benefit under the plan. See Thole v. U.S. Bank NA, 140 S. Ct. 1615 (2020).

[20] Since the beginning of the year, there have been more than 40 class action excess fee cases against plans sponsors claiming breach of fiduciary duty based on the types of investments selected in an ERISA 404(c) plan and the fees charges. See "CDI Corp. Latest Employer Hit in Frenzy of 401(k) Fee Litigation" Jacklyn Wille July 7, 2020 available at https://news.bloomberglaw.com/employee-benefits/cdi-corp-latest-employer-hit-in-frenzy-of-401k-fee-litigation. Adding additional requirements to plan investment decision will add to this litigation.

that would require a fiduciary to compare each investment or investment course of action to "available alternative investments or investment course of action" with respect to diversification, liquidity and projected returns.

The new requirement would apply to all types of plans, including defined benefit plans, defined contribution plans and self-directed defined contribution plans and to all types of investments and any "investment course of action."

We suggest deleting the new subparagraph (D) for the following reasons. First, as a practical matter, it is unclear how many comparisons must be made and to what the investment alternatives selected must be compared. For example, with respect to a defined benefit plan, fiduciaries generally will look to the plan's overall investments and liabilities to determine whether, in accordance with the investment policy, the current investment strategy should be changed. After making that determination, they would then look at what investment(s) areas need to change to meet the current needs, and finally, actual investments may be adjusted. It is unclear whether this new requirement would apply to the initial determination to change the investment strategy and then each underlying investment to meet it. Furthermore, subparagraph (D) does not necessarily take into account the complexities involved in pension investment, which varies, among other items, by plan design, participant census, the sponsor's risk tolerance and a company's cash needs.[21]

With respect to defined contribution plans, because the vast majority of defined contribution plans are participant directed accounts[22] and the current regulation already requires that a broad range of investment options[23] be offered, the addition of subparagraph (D) would overly complicate such plans, add to the litigation risk, and may be at odds with the ERISA Section 404(c) regulation. This is because it is unclear how to compare a selected investment that is one

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[21] See "Model Portfolio Framework, US Corporate Defined Benefit Plans", Brian Frick, Russell Investments available at https://russellinvestments.com/-/media/files/us/insights/institutions/defined-benefit/model-portfolio-framework-db-pension-plans.pdf?la=en&hash=21E71BE16872FA7D143B9650B63513FF5CCEB7E3.

[22] According to the DOL, in 2017, there were 662,829 defined contribution plans. Of that, 565,969 plans allowed participants to either direct some or all of their account. See "Private Pension Plan Bulletin," Abstract of 2017 Form 5500 Annual Reports Data Extracted on 7/19/2019 available at https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2017.pdf

[23] The regulation requires that an ERISA Section 404(c) plan offer a broad range of investment alternatives. To meet this requirement the available investment alternatives must be sufficient to provide the participant or beneficiary with a reasonable opportunity to:

(A) Materially affect the potential return on amounts in the individual's account;

(B) Choose from at least three investment alternatives:

(*1*) Each of which is diversified;

(*2*) Each of which has materially different risk and return characteristics;

(*3*) Which in the aggregate enable the individual to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for individual; and

(*4*) Each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of an individual's portfolio; and

(C) Diversify the investment to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' or beneficiaries' accounts.

29 C.F.R. § 2550.404c-1(b)(3).

of at least three that is meant to provide a broad based selection with "available alternative investments" or what those available alternative investments may be. [24]

4. Paragraph 2550.404a-1(c)(2)

This paragraph provides for the "tie-breaker" rule. Namely, that where one or more alternative investments are determined to be economically indistinguishable even after conducting the evaluation solely based on pecuniary factors, if an investment is selected on the basis of a non-pecuniary factor, the fiduciary must document why the investment was determined to be indistinguishable and why the "selected investment was chosen based on the purposes of the plan, diversification of investments, and the interests of plan participants and beneficiaries in receiving benefits from the plan."

The DOL notes in the preamble to the regulations that it:

> "expects that true ties rarely, if ever, occur. To be sure, there are highly correlated investments and otherwise very similar ones. Seldom, however, will an ERISA fiduciary consider two investment funds, looking only at objective measures, and find the same target risk return profile or benchmark, the same fee structure, the same performance history, same investment strategy, but a different underlying asset composition. Even then, moreover, those two alternatives would remain two different investments that may function differently in the overall context of the fund portfolio, and which going forward may perform differently based on external economic trends and developments."[25]

We agree with the DOL that the concept of a tie breaker is more of a theoretical exercise and not a scenario that regularly occurs in practice.

5. Paragraph 2550.404a-1(c)(3)

Paragraph (c)(3) applies to investment alternatives for individual account plans, and it:

- Applies the standards in (b)(1) and (2) to a "fiduciary's selection of an investment fund as a designated investment alternative in an individual account plan."
- Applies an additional standard and documentation requirement for any individual account plan that invests in one or more environmental, social, corporate governance, or similarly oriented assessments or judgments in their investment mandates, or that include these parameters in the fund name, to the selection of ALL investment alternatives.
- Prohibits an environmental, social, corporate governance, or similarly oriented investment mandate alternative from being added as, or as a component of, a qualified default investment alternative (QDIA) described in 29 CFR Section 2550.404c-5.

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[24] The open ended nature of the proposal with respect to the comparison in subparagraph (D) will leave plans open to challenges, and "nothing in ERISA requires every fiduciary to scour the market to find and offer the cheapest possible fund (which might, of course, be plagued by other problems)." Hecker v. Deere & Co., 556 F.3d 575, 586 7th Cir. 2009).

[25] 85 Fed. Reg. 39, 113, 39117 (June 30, 2020).

Although we understand the DOL's concern with respect to alternative investments in participant directed accounts, as drafted, the Proposal would add administrative complexity that may not be possible to comply with. This complexity and the associated lack of clarity could encourage the plaintiffs' bar to second guess investment lineups, at a time when breach of fiduciary duty litigation over investment selection is increasing at an alarming rate.[26]

a) Application of (b)(1) and (b)(2) to investment alternatives in individual account plans.

In 1979 when the current regulation was finalized, there were few, if any, participant directed individual account plans. In fact, 401(k) plans, which are the majority of plans that utilize ERISA Section 404(c) were not authorized until 1978, and the first 401(k) plans were not established until 1982.[27] As noted above, it was not until 1992 that the DOL issued its regulation under ERISA Section 404c) that addresses the unique nature of ERISA Section 404(c).

Given that the aim of Section 2550.404a-1 originally was focused on institutional investors in defined benefit plans and that there is a separate ERISA Section 404(c) regulation that requires that a broad range of investment alternatives be offered under an ERISA 404(c) plan[28], we believe that the appropriate place to address ESG or any other specific type of investment alternative in an ERISA Section 404(c) plan would be under 29 C.F.R. Section 2550.404(c)-1.

b) Additional Standards for Plans with Any ESG or ESG Component Investing

Under this provision, if there is any alternative investment in an ERISA Section 404(c) plan's lineup that invests in "one or more environmental, social, corporate governance, or similarly oriented assessments or judgments in their investment mandates, or that include these parameters in the fund name," the regulation would require that plan fiduciaries apply a heightened standard and documentation to the selection of all investments in the plan's lineup. We suggest deleting this additional requirement for the following reasons. First, the scope of this requirement is unclear. For example, would this apply only to a fund that solely invests in ESG or solely relies on ESG investment strategies or would this apply if any of the underlying investments, such as in a target date fund, mutual fund or collective investment trust, apply either environmental, social or corporate governance principles in their investment "assessment, judgements or mandates"? If the latter is the correct interpretation, for proprietary, and other reasons, it may not be possible for a fiduciary to know all of the underlying investments. In addition, it may pull in traditional funds that may draw on these themes and considerations as part of their mainstream process.

Secondly, if all investment may only be made based on pecuniary factors, no additional requirements should be added, regardless of the investment, and, all investments should be evaluated under the same standards. If the DOL believes that ESG factors should be addressed

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[26] Infra fn 20.

[27] The Revenue Act of 1978 added Section 401(k) to the Internal Revenue Code, effective January 1, 1980. Regulations were issued in November 1981, effective 1982. For a history of 401(k) plans see "Fast Facts: History of 401(k) Plans: An Update", EBRI, November 5, 2018 available at https://www.ebri.org/docs/default-source/fast-facts/ff-318-k-40year-5nov18.pdf?sfvrsn=1b773e2f_6

[28] 29 C.F.R. § 2550.404c-1(b)(3).

with respect to ERISA Section 404(c) plans, as noted above, the appropriate venue for that would be in the ERISA Section 404(c) regulation.

Finally, this provision would add administrative complexity and burdens to plan fiduciaries because it would require an additional analysis of all investments "if any investment is related to one or more environmental, social, corporate governance, or similarly oriented assessments or judgments in their investment mandates, or that include these parameters in the fund name." First, there is the burden of making the determination. Second, the Proposal requires heightened standards that do not apply to any other type of investments, which will require additional administrative burdens.

c) ESG and Qualified Default Investment Alternative

Clause (c) (iii) prohibits the environmental, social, corporate governance, or similarly oriented investment mandate alternative from being added as, or as a component of, a QDIA described in 29 CFR Section 2550.404c-5. Similar to our the general concerns with respect to investment alternatives for ERISA Section 404(c) plans, considering the scope of the proposal, if the DOL wishes to address whether any environmental, social, corporate governance, or similarly oriented investment mandate alternative or a component, can be a QDIA, the appropriate avenue for that is under the QDIA regulations at 29 C.F.R. 2550.404c-5.[29]

Conclusion

We thank you for your consideration of these comments, and we appreciate the efforts that have gone into the Proposal. We look forward to working with you on the final regulation to ensure that plan fiduciaries will continue to follow the well-established standards for investment duties, while not adding to administrative burdens.

Sincerely,

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[29] As noted in the DOL QDIA Factsheet, the QDIA "final regulation does not identify specific investment products – rather, it describes mechanisms for investing participant contributions. The intent is to ensure that an investment qualifying as a QDIA is appropriate as a single investment capable of meeting a worker's long-term retirement savings needs." See "DOL Fact Sheet, Regulation Relating to Qualified Default Investment Alternatives in Participant-Directed Individual Account Plans", April 2008 available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-qdia-in-participant-directed-account-plans.pdf