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Financial Factors in Selecting Plan Investments

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Submitter Information

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General Comment

The proposed regulation fails in targeting ESG as somehow ineligible as a consideration without special documentation. It presumes that the government knows the correct criteria, citing “benchmarks, expense ratios, fund size, long-term investment returns, volatility measures, investment manager tenure, and mix of asset types” as the legitimate objective criteria a fiduciary must use. This is a flawed view- in a dynamic market, long term risk and return must be viewed in a forward looking perspective, not what worked in the past. For example, a large proportion of plans have significant exposure to the S&P 500, yet the top five stocks account for 20 percent of the weight. Is this not a concentration risk? Permitted bond funds are yielding around 1 percent- what is the expected long term reward? Meanwhile these asset classes apparently are sanctioned under “generally accepted investment theories”. ESG is credibly posited as a factor that can influence risk/return and should not be burdened with special regulatory restrictions which, by implication in the rule, are likely to cause plans to perceive them as linked by the government to nonpecuniary criteria and avoid the asset class even as an option. The focus on sanctioned pecuniary factors has already led to investment choices selected for regulatory compliance and resulted in excessive concentration by plans in aggregate.

I urge the DOL to withdraw the rule or start from scratch and undertake a complete review of implied sanctioning of investment choices in ERISA.

Alternatively, or in addition, for DC plans, a safe harbor should be included in the rule (c)(3) requiring all plans to offer beneficiaries the option to move assets to an IRA. This would allow the beneficiary to exercise the individual choice to include or exclude investment classes when

they believe that the fiduciary's selected choices are not in alignment, and at the same time relieve the plan from liability in investment selection.

Thank you for your consideration.

Respectfully,