

# PUBLIC SUBMISSION

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Financial Factors in Selecting Plan Investments

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

Integrating environmental, social, and governance (ESG) factors into investment activities is essential to fulfilling fiduciary obligations to engage in appropriate risk management. I believe that the Proposed Rule fundamentally misconstrues the importance and role of ESG integration in reducing risk and increasing returns. Further, the Proposed Rule is likely to lead to confusion and costs for retirement plan fiduciaries. Therefore, I urge you to retain existing guidance and not move forward with a final rule.

Despite the Proposed Rule's stated goal of providing clarity for ERISA fiduciaries, it instead creates confusion due in part to a failure to distinguish ESG integration and Economically Targeted Investing (ETI). ESG integration is the consideration of risk factors as part of prudent fiduciary management and a strategy that takes these factors into account in investment actions. ETIs are investments that aim to provide financial returns as well as collateral, non-financial benefits. For example, ETIs often advertise job creation or climate impact as goals of the investment.

The Proposed Rule states that ERISA fiduciaries have fulfilled their obligations if they have "selected investments and/or investment courses of action based solely on pecuniary factors" and that "ESG factors and other similar factors may be economic considerations." In fact, there is now an extensive body of research that makes clear that ESG factors are material investment considerations. As such there exists a sound basis for integrating ESG factors into investment actions.

I am highly concerned that the Proposed Rule inappropriately creates new burdens for fiduciaries under the "all else being equal test" that will lead to unnecessary costs for plan participants. It also creates confusion about what activities the DOL is attempting to regulate.

The Proposal's discussion of the "all things being equal test" is cause for confusion because, while the test was originally developed to guide the consideration of ETIs, and the discussion in the Proposal appears to envision the selection of an ETI investment, the language of the Proposal does not distinguish the application of this test from the broader discussion of ESG integration, inappropriately suggesting that the documentation requirement is necessary whenever ESG factors are considered.

The Proposal mischaracterizes ESG integration and fails to distinguish between ESG integration and economically targeted investing. This is likely to lead to confusion for ERISA fiduciaries and costs to plan savers. If the Proposal is finalized in its current form, I am concerned that fiduciaries will struggle to fulfill their obligations to integrate all financially material risk factors while also trying to respond to the language in the Proposal that appears to be aimed at preventing fiduciaries from taking account of these same risks.

Institutional investors have a duty to act in the best, long-term interests of their beneficiaries. In this fiduciary role, I believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. If the Proposed Rule goes into effect, it will undermine fiduciaries' ability to act in the long-term best interest of their beneficiaries. As such, I implore you to allow the existing guidance to remain in effect and not move forward with a final rule.