

# PUBLIC SUBMISSION

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**Docket:** EBSA-2021-0013

Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

**Comment On:** EBSA-2021-0013-0001

Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

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## Submitter Information

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## General Comment

<https://www.forbes.com/sites/jamestaylor/2013/05/08/sorry-global-warmists-but-extreme-weather-events-are-becoming-less-extreme/?sh=793a66c355a4>

This above-linked article in Forbes dispels the incorrect view that “climate change” and, specifically, “global warming” is resulting in increasing extreme weather events. Therefore, the entire premise of this change to long-standing ERISA regulations (“proposal”) in subservience to the current administration’s uber-liberal, woke political agenda is faulty. In Section B, Provisions of the Proposed Rule, subsection 1, Investment Prudence Duties, asserts the following premise: “The effects of climate change such as sea level rise, changing rainfall patterns, and more severe droughts, wildfires, and flooding are expected to continue to pose a threat to investments far into the future.” There is no mention of actual extreme events such as tornados and hurricanes, and there is no acknowledgment that “severe droughts, wildfires, and flooding” can, and most often are, the result of factors besides the gradual warming of the planet. There is no explanation of how “changing rainfall patterns” reliably can be attributed to “global warming” or to business financial risk. When the prudence obligation becomes this flaccid, it ceases having any meaningful, enforceable impact. The “safe harbor” provision, under this circumstance, becomes a catch-all for all manner of potential chicanery. Consideration, by fiduciaries, of “ESG factors” in selecting investments for others opens the door to abuse and political manipulation by

companies bent on using these plans for political ends, at the expense of the interests of plan beneficiaries. A requirement that comparable “non-ESG-themed investment options” be offered alongside any “ESG-themed” options, and showing the same “pecuniary” risks and benefits (“all things being equal”), might mitigate the risk of abuse and preserve the right of plan participants to choose whether their investments should have a political or social “theme” or tether. The alternative is the elimination of the “safe harbor” provision entirely, so that fiduciaries may be held strictly accountable for their “themed” selections.

Further, the federal government should avoid, at all opportunities, involvement in the private affairs of men. Federal regulations touching on selection of board members (“governance factors, such as those involving board composition, executive compensation, and transparency and accountability in corporate decision-making”) and workforce practices (“including the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention”) are not necessary, nor are they appropriate. Federal government intrusion into the private sector ought to be minimal and in strict furtherance of the authority granted in, and the protections guaranteed by, the U.S. Constitution. This Proposed Rule focusing on “prudence and loyalty” and “environmental, social or governance” factors in ERISA plans rather than strictly pecuniary ones is bloated, unnecessary, government overreach in the extreme.

I have a further concern akin to that of government overreach, and that is government secrecy, which every American should abhor. Normally whenever the government proposes new federal rules and regulations, it gives the public an opportunity to comment on the proposal, and such comments are made public. In this case the comments are, in fact, NOT public. The proposal CLAIMS that all comments will be made available on [www.regulations.gov](http://www.regulations.gov) and [www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa). However, public comments to this regulation are available at neither website. The proposal discusses what the comments say, but in such one-sided manner as to strain credulity.

Moreover, the proposal also asserts that public comments will be made available to anyone who physically visits the Employee Benefits Security Administration’s (EBSA) office in Washington D.C. But, according to the EBSA website, that office has “temporarily moved to telephone and website contact only” because of COVID-19. Therefore, currently, all public comments for this proposed regulation are being buried and kept secret as the deadline for its passage (December 13) quickly approaches. Since the comments are NOT public, any passage of the regulation might be subject to legal challenge.