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General Comment

IN 1210-AB95. The rule suggests without evidence that the growing emphasis on Environmental, Social, and Corporate Governance (ESG) investing may be causing ERISA plan fiduciaries to make investment decisions for reasons other than to provide benefits to participants and beneficiaries.
the DOL proposal shows that the Labor Department is misjudging professional investment managers who analyze ESG factors precisely because of risk, return and fiduciary considerations. A 2018 survey of sustain Investment able investment firms in the United States by The Forum for Sustainable and Responsible Investment found that 141 money managers with aggregated assets of more than $4 trillion responded to a question on their motivations for incorporating ESG criteria into their investment process. Three quarters of these managers cited the desire to improve returns and to minimize risk over time. Fifty-eight percent cited their fiduciary duty obligations as a motivation.
Making managers jump through more hoops to incorporate ESG criteria will have a chilling effect, leading to plan participants losing access to ESG options---many of which have outperformed their indices over time and especially during the market shock related to COVID 19.
The 2015 DOL Interpretive Bulletin clarified that fiduciaries of ERISA-governed pension plans need not treat commercially reasonable investments as inherently suspect or in need of special scrutiny merely because they take into consideration environmental, social or other such factors. That guidance assures fiduciaries that they may incorporate ESG-related tools, metrics and analyses to evaluate an investment's risk or return or choose among otherwise equivalent investments.
The 2015 guidance reflected the deep interest in ESG investing---that interest has only grown.

The proposed rule acknowledges this noting that 'available research and data show a steady upward trend in use of the term ESG among institutional asset managers, an increase in the array of ESG focused investment vehicles available, a proliferation of ESG metrics, services, and ratings offered by third party service providers and an increase in asset flows into ESG funds. A new rulemaking is not only unnecessary but will be damaging to the interests of investors.

The DOL implies by this rule that corporate plans will profit by switching from actively run ESG investments to lower-cost indexers. That may be true. But once again, the same logic would seem to apply to all actively managed funds. Active managers, both retail and institution, tend to lag index funds. It is strange that the DOL's counsel extends only to one type of active management, rather than the entire field.
Finally, I cannot help but think there is a political motivation behind this proposed regulation since the Whitehouse seems to favor coal and oil investment over sustainable energy sources.