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General Comment

The DOL provides no evidence that fiduciaries are choosing ESG investments for prohibited factors, although it seems to imply it, stating that fiduciaries may be making decisions for impermissible reasons and that investment products may be marketed to fiduciaries on the basis of non-pecuniary benefits. If there is evidence that this is happening, evidence that might justify the rule, let them provide it.

The proposed rulemaking suggests that the DOL is unaware of the multitude of research that shows a positive link between ESG funds and financial performance. That research leads many investment managers to consider ESG factors appropriately in line with fiduciary and financial considerations.

The definition of when ESG factors are considered non-financial is very and inappropriately narrow, given the growing evidence regarding the link between such factors and financial performance. This research is ongoing and rapidly evolving, and the DOL should not require fiduciaries to prove that ESG factors are deemed material under generally accepted investment theories when it may well be the dated theories that are immaterial.

It is unclear when a defined contribution plans investment alternative would be deemed to include ESG assessments in its investment mandate. Many portfolio and fund managers integrate ESG considerations when making investment and voting decisions, though they do not claim to promote ESG benefits or follow an ESG-specific approach. (BlackRocks announcement earlier this year that it would make sustainability integral to portfolio construction and risk management illustrates the mainstream appeal of ESG integration.) The DOL should make clear that the proposed rule does not apply in such cases.