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DEPARTM

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210-AC37

Loyalty and the Exclusive Purpose Rule in Selecting Plan Investments and Exercising Shareholder Rights

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, the Department of Labor (Department) clarifies the fiduciary duty of loyalty under the Employee Retirement Income Security Act of 1974 (ERISA). The proposed rule affirms that ERISA's duty of loyalty requires fiduciaries to act with the exclusive purpose of ensuring retirement security and providing promised benefits to plan participants and their beneficiaries. The amendments clarify the neutral application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, and to exercising shareholder rights, including proxy voting, the use of written proxy voting policies and guidelines, and shareholder engagement activities. The amendments would enhance the regulation by adding an affirmative expression of the duty of loyalty that is more consistent with the statute, and removing the tiebreaker test and participant preference provisions, which do not comport with the best reading of the statute and are susceptible to abuse, including use by a fiduciary as pretext to employ plan assets to pursue personal preferences or objectives unrelated to financial benefits under the plan. In the Department's view, the best reading of ERISA's exclusive purpose provision is and has always been that a plan fiduciary may not start with an ulterior motive or consider any factors collateral to plan participants' financial interests during any part of the process of making investment-selection decisions. The proposal would strengthen the fiduciary standards of pension and retirement plans

covered by ERISA as instructed in President Trump's Executive Order 14366, *Protecting American Investors from Foreign-Owned and Politically Motivated Proxy Advisors*.

DATES: Comments on the proposal must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted to the address specified below. Please do not submit duplicates.

Comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the internet exactly as received and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, please refer to file code 1210-AC37. The Department cannot accept comments by facsimile (FAX) transmission. Comments must be submitted in one of the following two ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By mail.* You may mail written comments to the following address ONLY: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, *Attention:* 1210-AC37. Please allow sufficient time for mailed comments to be received before the close of the comment period.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. The comments are posted on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow

the search instructions on that website to view public comments. The Department encourages commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the materials referenced, including active hyperlinks. Likewise, commenters who reference materials that have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist the Department in analyzing the comments.

Plain Language Summary: In accordance with 5 U.S.C. 553(b)(4), a summary of not more than 100 words in length of this proposed rule, in plain language may be found at *https://www.regulations.gov/.*

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning ERISA and employee benefit plans may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline, at 1–866–444–EBSA (3272) or visit the Department of Labor's website (www.dol.gov/ebsa).

SUPPLEMENTARY INFORMATION:

A. Executive Summary

This proposal is intended to clarify the application of the fiduciary duties of prudence and loyalty under the Employee Retirement Income Security Act of 1974 (ERISA) to the selection of investments and investment courses of action, including selecting qualified default investment alternatives, and to the exercise of shareholder rights, such as proxy voting, the use of written

proxy voting policies and guidelines, and corporate engagement.[1] The Department has addressed these standards previously in regulatory and sub-regulatory guidance, including the Department's Investment Duties regulation at 29 CFR 2550.404a-1 (Investment Duties regulation), which has been amended several times in recent years. The Department believes that further amendments are needed to ensure that the regulation is based on the best reading of the ERISA statute and is consistent with the statute's purposes.

The proposal would restore neutrality to the Investment Duties regulation by removing terminology associated with environmental, social and governance (ESG) issues, which has become the subject of substantial public controversy and political attention. By clarifying that ERISA neither favors nor disfavors any investment objective or investment strategy, the proposal would depoliticize ESG issues under ERISA, add long-term stability to the regulation, and bolster confidence of plan fiduciaries in the conduct of their ERISA-regulated activities. The proposal also would enhance the protectiveness of the regulation by adding an affirmative expression of the duty of loyalty that is more consistent with ERISA's plain language, and by removing provisions that are susceptible to abuse and may be employed by a fiduciary as pretext to use plan assets in pursuit of personal preferences or objectives unrelated to financial benefits under the plan. In addition, the proposal supplements the notice of proposed rulemaking entitled Fiduciary Duties in Selecting Designated Investment Alternatives ("Investment Selection NPRM"), published on March 31, 2026, which addressed a fiduciary's duty of prudence under ERISA in selecting investment options for a participant-directed individual account plan.[2] The preamble to the Investment Selection NPRM stated that "nothing in [that proposal] excuses a fiduciary from complying with its obligations to act loyally or avoid prohibited conflicts of interest under sections 404(a)(1)(A) or 406 of ERISA respectively."[3] This proposal would

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[1] This proposal does not address the potential applicability of the Investment Advisers Act of 1940 (Advisers Act) to ERISA plan fiduciaries, nor does it modify, amend or alter the scope or substance of an investment adviser's Federal fiduciary duty under the Advisers Act.
[2] 61 FR 16088 (Mar. 31, 2026).
[3] 61 FR at 16095.

clarify ERISA's fiduciary duty of loyalty. Finally, consistent with Executive Order 14366, *Protecting American Investors from Foreign-Owned and Politically Motivated Proxy Advisors,* the proposal would more clearly articulate that ERISA's fiduciary duties apply broadly to the exercise of shareholder rights including both proxy voting and shareholder engagement activities.[4]

B. Background and Purpose of Regulatory Action

1. General.

Title I of ERISA establishes minimum standards that govern the operation of private-sector employee benefit plans, including fiduciary responsibilities. Section 404 of ERISA requires that plan fiduciaries act prudently and diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.[5] Sections 403(c) and 404(a) also require fiduciaries to act solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan.[6]

2. Sub-regulatory guidance.

2.1. Collateral effects and interests in investment decisions.

Over the years the Department has issued sub-regulatory guidance, such as interpretive bulletins, advisory opinions, information and other letters, to assist plan fiduciaries in understanding their obligations under ERISA with respect to investment decisions involving interests apart from investment return. The sub-regulatory guidance has articulated broad principles governing a fiduciary's ability to consider effects collateral to investment return in

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[4] Section 4(b) of Executive Order 14366, *Protecting American Investors from Foreign-Owned and Politically Motivated Proxy Advisors* (Dec. 11, 2025), reprinted in 90 FR 58503 (Dec. 16, 2025) ("The Secretary of Labor shall take all appropriate action to strengthen the fiduciary standards of pension and retirement plans covered under ERISA. Such action shall include assessing whether proxy advisors act solely in the financial interests of plan participants and the extent to which any of their practices undermine the pecuniary value of the assets of ERISA plans").

[5] 29 U.S.C. 1104.

[6] 29 U.S.C. 1103(c) and 1104(a).

making pension plan investments. The Department's guidance generally concluded that ERISA's duty of loyalty does not categorically prohibit consideration of collateral interests in a fiduciary's evaluation of a particular investment opportunity, but the existence of such collateral interests can be considered in evaluating the investment only if the fiduciary determines that the investment is appropriate for the plan, taking into account the role the particular investment plays in the plan's investment portfolio, and is expected to provide an investment return to the plan commensurate to other available investments having similar risks.[7]

In 1994, the Department published Interpretive Bulletin 94-1 (IB 94-1), which addressed economically targeted investments (ETIs) selected, in part, for collateral interests apart from the investment return to the plan investor.[8] The Department's objective in issuing IB 94-1 was to state that ETIs[9] are not inherently incompatible with ERISA's fiduciary obligations. The preamble to IB 94-1 explained that the requirements of sections 403 and 404 of ERISA do not prevent plan fiduciaries from investing plan assets in ETIs if the investment has an expected rate of return at least commensurate to rates of return of available alternative investments, and if the ETI is otherwise an appropriate investment for the plan in terms of such factors as diversification and the investment policy of the plan. Some commentators have referred to this as the "all things being equal" test or the "tiebreaker" standard. The Department stated in the preamble to IB 94-1 that when competing investments serve the plan's economic interests to an equivalent degree,

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[7] See Advisory Opinions 80-33A, 85-36A and 88-16A; Information Letters to Mr. George Cox, dated Jan. 16, 1981; to Mr. Theodore Groom, dated Jan. 16, 1981; to The Trustees of the Twin City Carpenters and Joiners Pension Plan, dated May 19, 1981; to Mr. William Chadwick, dated July 21, 1982; to Mr. Daniel O'Sullivan, dated Aug. 2, 1982; to Mr. Ralph Katz, dated Mar. 15, 1982; to Mr. William Ecklund, dated Dec. 18, 1985, and Jan. 16, 1986; to Mr. Reed Larson, dated July 14, 1986; to Mr. James Ray, dated July 8, 1988; to the Honorable Jack Kemp, dated Nov. 23, 1990; and to Mr. Stuart Cohen, dated May 14, 1993. The Department also granted a number of prohibited transaction exemptions (PTEs) to both individual plans and pooled investment vehicles involving investments that take into consideration collateral interests. See PTE 76-1, part B; PTE 84-25; PTE 85-58; PTE 87-20; PTE 87-70; PTE 88-96; PTE 89-37; and PTE 93-16.

[8] 59 FR 32606 (June 23, 1994) (appeared in Code of Federal Regulations as 29 CFR 2509.94-1), available at https://www.govinfo.gov/content/pkg/FR-1994-06-23/html/94-15162.htm

[9] IB 94-1 used the terms ETI and economically targeted investments to broadly refer to any investment or investment course of action that is selected, in part, for its expected collateral interests, apart from the investment return to the employee benefit plan investor.

plan fiduciaries can use such collateral considerations as the deciding factor for an investment decision.

In 2008, Interpretive Bulletin 2008-01 (IB 2008-01) superseded IB 94-1,[10] and then, in 2015, Interpretive Bulletin 2015-01 (IB 2015-01) superseded IB 2008-01.[11] Although the Interpretive Bulletins differed in tone and framing, each included the "all things being equal" test, while also stressing that the focus of plan fiduciaries on the plan's financial returns and on providing promised benefits to participants and beneficiaries may never be subordinated to collateral interests. Each Interpretive Bulletin also cautioned that fiduciaries violate ERISA if they accept reduced risk-adjusted returns in pursuing social, environmental, or other policy goals or any other collateral interests.

The preamble to IB 2015-01 additionally explained that if a fiduciary prudently determines that an investment is appropriate based solely on economic considerations, including those that may derive from ESG factors, the fiduciary may make the investment without regard to any collateral interests the investment may also promote. In Field Assistance Bulletin 2018-01 (FAB 2018-01), the Department indicated that IB 2015-01 had recognized that there could be instances when ESG issues present business risks or opportunities to companies that officers and directors need to manage as part of the company's business plan, and that qualified investment professionals would treat the issues as significant economic considerations under generally accepted investment theories.[12] The FAB further stated that when they are appropriate economic considerations, such ESG issues should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments. In

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[10] 73 FR 61734 (Oct. 17, 2008), available at https://www.federalregister.gov/documents/2008/10/17/E8-24551/interpretive-bulletin-relating-to-investing-in-economically-targeted-investments

[11] 80 FR 65135 (Oct. 26, 2015), available at https://www.federalregister.gov/documents/2015/10/26/2015-27146/interpretive-bulletin-relating-to-the-fiduciary-standard-under-erisa-in-considering-economically

[12] FAB 2018-01, available at www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01.pdf.

other words, in these instances, the Department viewed these factors not as "tiebreakers," but "risk-return" factors affecting the economic merits of the investment.

FAB 2018-01 cautioned, however, that "[t]o the extent ESG factors, in fact, involve business risks or opportunities that are properly treated as economic considerations themselves in evaluating alternative investments, the weight given to those factors should also be appropriate to the relative level of risk and return involved compared to other relevant economic factors."[13] FAB 2018-01 also emphasized that fiduciaries "must not too readily treat ESG factors as economically relevant to the particular investment choices at issue when making a decision," as "[i]t does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors." Rather, ERISA fiduciaries must always put first the economic interests of the plan in providing retirement benefits, and "[a] fiduciary's evaluation of the economics of an investment should be focused on financial factors that have a material effect on the return and risk of an investment based on appropriate investment horizons consistent with the plan's articulated funding and investment objectives."[14]

FAB 2018-01 also explained that in the case of an investment platform that allows participants and beneficiaries an opportunity to choose from a range of investment alternatives, a prudently selected, well managed, and properly diversified ESG-themed investment alternative could be added to the available investment options on the 401(k) platform without requiring the plan to remove or forgo adding other non-ESG-themed investment options to the platform.[15] As stated in the FAB, however, the selection of an investment fund as a qualified default investment alternative (QDIA)[16] is not analogous to a fiduciary's decision to offer participants an additional

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[13] Id.
[14] Id.
[15] Id.
[16] 29 CFR 2550.404c-5. 29 CFR 2550.404c-5 establishes conditions under which a participant or beneficiary in a participant-directed individual account plan will be deemed to have exercised control over assets in his or her account when, in the absence of investment directions from the participant or beneficiary, the plan invests all or part

investment alternative as part of a prudently constructed lineup of investment alternatives from which participants may choose. The FAB expressed concern that the decision to favor the fiduciary's own policy preferences in selecting an ESG-themed investment option as a QDIA for a 401(k)-type plan without regard to possibly different or competing views of plan participants and beneficiaries would raise questions about the fiduciary's compliance with ERISA's duty of loyalty.[17] In addition the FAB stated that, even if consideration of such factors could be shown to be appropriate in the selection of a QDIA for a particular plan population, the plan's fiduciaries would have to ensure compliance with the previous guidance in IB 2015-01. For example, the selection of an ESG-themed target date fund as a QDIA would not be prudent if the fund would provide a lower expected rate of return than available non-ESG alternative target date funds with commensurate degrees of risk, or if the fund would be riskier than available non-ESG alternative target date funds with commensurate rates of return.

2.2. Proxy voting.

The Department's past sub-regulatory guidance has consistently recognized that the fiduciary act of managing employee benefit plan assets includes the management of voting rights, as well as other shareholder rights connected to shares of stock, and that management of those rights, and shareholder engagement activities, is subject to ERISA's prudence and loyalty requirements.

The Department first issued sub-regulatory guidance on proxy voting and the exercise of shareholder rights in the 1980s. For example, in 1988, the Department issued an opinion letter to Avon Products, Inc. (the Avon Letter), in which the Department took the position that the fiduciary act of managing plan assets that are shares of corporate stock includes the voting of

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of a participant's or beneficiary's account in a QDIA. When a plan complies with the regulation, plan fiduciaries are not liable under Part 4 of ERISA for any loss or by reason of any breach which results from such participant's or beneficiary's exercise of control, but the plan fiduciaries remain responsible for the prudent selection and monitoring of the QDIA.

[17] FAB 2018-01, available at https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01

proxies appurtenant to those shares, and that the named fiduciary of a plan has a duty to monitor decisions made and actions taken by investment managers with regard to proxy voting.[18] In 1994, the Department issued its first interpretive bulletin on proxy voting, Interpretive Bulletin 94-2 (IB 94-2).[19] IB 94-2 recognized that fiduciaries may engage in shareholder activities intended to monitor or influence corporate management if the responsible fiduciary concludes that, after taking into account the costs involved, there is a reasonable expectation that such shareholder activities (by the plan alone or together with other shareholders) will enhance the value of the plan's investment in the corporation. The Department also reiterated its view that ERISA does not permit fiduciaries, in voting proxies or engaging in other shareholder activities, such as "monitoring or communication" with corporate management (now commonly known as corporate engagement or shareholder engagement, whether such engagement activities are limited to corporate management or extend to other shareholders, advisors, or third persons), to subordinate the economic interests of participants and beneficiaries to unrelated objectives.

In October 2008, the Department replaced IB 94-2 with Interpretive Bulletin 2008-02 (IB 2008-02).[20] The Department's intent was to update the guidance in IB 94-2 and to reflect interpretive positions issued by the Department after 1994 on shareholder engagement and socially directed proxy voting initiatives. IB 2008-02 stated that fiduciaries' responsibility for managing proxies includes both deciding to vote and deciding not to vote.[21] It further stated that the fiduciary duties described at ERISA sections 404(a)(1)(A) and (B) require that in voting proxies the responsible fiduciary shall consider only those factors that relate to the economic value of the plan's investment and shall not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives. In addition, IB 2008-02 stated

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[18] Letter to Helmuth Fandl, Chairman of the Retirement Board, Avon Products, Inc. 1988 WL 897696 (Feb. 23, 1988).
[19] 59 FR 38860 (July 29, 1994).
[20] 73 FR 61731 (Oct. 17, 2008).
[21] 73 FR 61732.

that votes shall be cast only in accordance with a plan's economic interests, and further[22] explained that if the responsible fiduciary reasonably determines that the cost of voting (including the cost of research, if necessary, to determine how to vote) is likely to exceed the expected economic benefits of voting, the fiduciary has an obligation to refrain from voting. The Department warned that "[p]lan fiduciaries risk violating the exclusive purpose rule when they exercise their fiduciary authority in an attempt to further legislative, regulatory or public policy issues through the proxy process."[23] The Department reiterated in IB 2008-02 that any use of plan assets by a plan fiduciary to further political or social causes "that have no connection to enhancing the economic value of the plan's investment" through proxy voting or shareholder activism is a violation of ERISA's exclusive purpose and prudence requirements.[24]

In 2016, the Department issued Interpretive Bulletin 2016-01 (IB 2016-01), which reinstated the language of IB 94-2 with certain modifications.[25] IB 2016-01 reiterated and confirmed that "in voting proxies, the responsible fiduciary [must] consider those factors that may affect the value of the plan's investment and not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives."[26] In its guidance, the Department has also stated that it rejects a construction of ERISA that would render the statute's tight limits on the use of plan assets illusory and that would permit plan fiduciaries to expend trust assets to promote myriad personal public policy preferences at the expense of participants' economic interests, including through shareholder engagement activities, voting proxies, or other investment policies.[27]

3. Regulatory guidance.

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[22] Id.
[23] Id.
[24] Id.
[25] 81 FR 95879 (Dec. 29, 2016). The Department addressed questions related to IB 2016-01 in FAB 2018-01, discussed above.
[26] 81 FR 95882.
[27] See 81 FR 95881.

The Department's Investment Duties regulation at 29 CFR 2550.404a-1 was originally adopted in 1979 to provide guidance on ERISA's fiduciary duty of prudence under ERISA section 404(a)(1)(B) with respect to investments and investment courses of action.[28]

3.1. 2020 final rules.

In 2020, the Department published two final rules (2020 final rules) that amended the Investment Duties regulation. The Department's objective was to address perceived confusion about the implications of its non-regulatory guidance with respect to ESG considerations, shareholder rights, and proxy voting.[29] The Department noted, for instance, that confusion with respect to ESG investing issues appeared to persist, potentially generated in part by the different iterations of the sub-regulatory guidance. The Department also expressed concern that current ESG trends suggested that plan fiduciaries may make investment decisions for purposes distinct from the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan, in violation of their fiduciary duty of loyalty. The Department further noted that marketers may be inappropriately targeting 401(k)-type plans covered by ERISA for investment products represented to promote perceived interests and goals unrelated to financial performance, and, as a result, participants may be offered funds that accept lower returns or higher investment risks to pursue ESG objectives.

In a final rule published in November 2020, the Department amended the Investment Duties regulation to generally require plan fiduciaries to select investments and investment courses of action based solely on consideration of "pecuniary factors."[30] The final rule also added a specific requirement for fiduciaries to consider reasonably available alternatives to meet their prudence duties under ERISA with respect to an investment or investment course of action. It furthermore added regulatory text setting forth required investment analysis and

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[28] 44 FR 37225 (June 26, 1979).
[29] See 85 FR 39113 (June 30, 2020) (proposed rule); 85 FR 55219 (Sept. 4, 2020) (proposed rule).
[30] 85 FR 72846 (Nov. 13, 2020).

documentation requirements for those circumstances in which plan fiduciaries may use non-pecuniary factors when choosing between or among investments that the fiduciary is unable to distinguish on the basis of pecuniary factors alone (i.e., there is a "tie"). It added a provision expressly providing that, in the case of selecting or retaining designated investment alternatives for an individual account plan that allows plan participants and beneficiaries to choose from a broad range of investment alternatives, a fiduciary would not be prohibited from considering or including an investment alternative solely because it promotes, seeks, or supports one or more non-pecuniary goals. However, the provision prohibited plans from adding or retaining any investment as a QDIA, or as a component of such a QDIA, if the investment includes, considers, or indicates the use of one or more non-pecuniary objectives in its investment objectives or goals or its principal investment strategies.

In December 2020, the Department published a final rule that further amended the Investment Duties regulation by adding provisions that address the duties of ERISA fiduciaries with respect to the exercise of shareholder rights (including shareholder engagement and proxy voting), adoption of proxy voting policies and guidelines, and the selection and monitoring of proxy advisory firms.[31] The preamble to the final rule indicated a concern that there was a misunderstanding that fiduciaries must vote all proxies.[32] Accordingly, the final rule included specific language indicating that fiduciaries are not required to vote every proxy. It also included a "safe harbor" provision pursuant to which plan fiduciaries could adopt proxy voting policies and parameters prudently designed to serve the plan's economic interest that provide optional means for satisfying their fiduciary duties of loyalty under ERISA.

3.2. 2022 final rule.

Following publication of the 2020 final rules, the Department heard from a variety of stakeholders who voiced questions and concerns about the 2020 final rules. In October 2021, the

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[31] 85 FR 81658 (Dec. 16, 2020).
[32] See 85 FR 81660.

Department published a proposed rule to amend the Investment Duties regulation in response to some of those concerns.[33] In December 2022, the Department published a final rule amending the Investment Duties regulation (2022 final rule).[34] The 2022 final rule kept in place the longstanding principles that the duties of prudence and loyalty require ERISA plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries to objectives unrelated to the provision of benefits under the plan such as by sacrificing investment returns or taking on additional investment risks. It also retained the core principle that when a plan's assets include shares of stock, the fiduciary duty to manage plan assets includes the management of shareholder rights related to those shares, such as the right to vote proxies.

The 2022 final rule, however, also effectively rescinded or modified certain amendments that were adopted by the 2020 final rules. Among other things, the 2022 final rule:

- Removed the "pecuniary/non-pecuniary" terminology and added language providing that a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, and also added that such factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action.
- Removed the stricter rules for QDIAs, so that the same standards apply to QDIAs as to investments generally.
- Amended the "tiebreaker" test with a restated standard that required the fiduciary to conclude prudently that competing investments, or competing investment courses of action, equally serve the financial interests of the plan over the appropriate time horizon and provided that the fiduciary is not prohibited from selecting the investment, or

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[33] 86 FR 57272 (Oct. 14, 2021).
[34] 87 FR 73822 (Dec. 1, 2022).

investment course of action, based on collateral interests other than investment returns, and removed the special documentation requirements.

- Added a provision stating that fiduciaries do not violate their duty of loyalty solely because they take participants' preferences into account when constructing a menu of prudent investment options for participant-directed individual account plans.
- Eliminated the statement that the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right.
- Eliminated specific requirements on maintaining records on proxy voting activities and monitoring obligations when using investment managers or proxy advisory firms.

3.3. Litigation challenging the 2022 final rule.

Multiple States and private parties sued the Department in Federal court, challenging the 2022 final rule as arbitrary and capricious under the Administrative Procedure Act (APA), and contrary to ERISA and the major questions doctrine.[35] Specifically, the plaintiffs alleged that the 2022 final rule's tiebreaker provision breached ERISA's "exclusive purpose" duty.[36,37]

The U.S. District Court for the Northern District of Texas entered summary judgment for the Department, finding that the rule was neither contrary to ERISA nor to the major questions doctrine, and that it was not arbitrary or capricious. In so holding, the court deferred to the Department's interpretation of section 404 as reasonable, under the then-binding *Chevron* deference standard.[38]

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[35] *Utah v. Micone*, 766 F. Supp. 3d 669 (N.D. Tex. 2025); see also Complaint, *Luehrs v. Walsh*, No. 23-cv-234 (E.D. Wis. Feb. 21, 2023).

[36] Section 404(a)(1)(A) requires that an ERISA fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and "for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan." 29 U.S.C. 1104(a)(1)(A).

[37] *See* Amended Complaint at para. 138, *Utah v. Micone*, No. 2:23-CV-016-Z, ECF No. 47 (N.D. Tex. Jan. 26, 2023).

[38] *Utah v. Walsh*, No. 2:23-CV-016-Z, 2023 WL 6205926, at *4–5 (N.D. Tex. Sept. 21, 2023). See also *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

Plaintiffs appealed to the U.S. Court of Appeals for the Fifth Circuit. While the appeal was pending, the U.S. Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overturned *Chevron*'s deference standard. In response, the Fifth Circuit vacated the district court's judgment (which had relied on *Chevron*) and remanded the case, directing the district court to reconsider the plaintiffs' challenge in light of *Loper Bright*.[39]

On remand, the court held that *Loper Bright* did not impact its previous reasoning that the 2022 final rule is not arbitrary or capricious or violative of the major questions doctrine. As to the 2022 final rule's tiebreaker standard, the district court, applying *Loper Bright* and exercising its independent judgment, concluded the tiebreaker provision is not contrary to section 404's exclusive purpose duty. The court reasoned, the "2022 Rule does not permit a fiduciary to act for other interests than the beneficiaries' or for other purposes than the beneficiaries' financial benefit."[40] The court again granted summary judgment for the Department and upheld the 2022 final rule.

4. Executive Order 14366

On December 11, 2025, President Trump issued Executive Order 14366, *Protecting American Investors from Foreign-Owned and Politically Motivated Proxy Advisors*.[41] EO 14366 indicates that two firms control more than 90 percent of the proxy advisor market. The two firms advise their clients about how to vote the enormous numbers of shares their clients hold and manage on behalf of millions of Americans in mutual funds and exchange traded funds. They wield enormous influence over corporate governance matters, including shareholder proposals, board composition, and executive compensation, as well as over the capital markets and the value of Americans' investments more generally, including 401(k)s, IRAs,

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[39] *Utah v. Su*, 109 F.4th 313, 322 (5th Cir. 2024).
[40] *Utah v. Micone*, 766 F. Supp. 3d 669, 686 (N.D. Tex. 2025).
[41] 90 FR 58503 (Dec. 16, 2025).

and other retirement investment vehicles. According to EO 14366, these proxy advisors regularly use their substantial power to advance and prioritize politically-motivated agendas even though investor returns should be the only priority. Their practices also raise significant concerns about conflicts of interest and about the quality of their recommendations, among other issues. The United States must therefore increase oversight of these proxy advisors and take action to restore public confidence in the proxy advisor industry, including by promoting accountability, transparency, and competition.[42]

EO 14366 instructed the Secretary of Labor, consistent with the Administrative Procedure Act, take steps to revise all regulations and guidance regarding the fiduciary status of individuals who manage, or, like proxy advisors, advise those who manage, the rights appurtenant to shares held by plans covered under ERISA, including proxy votes and corporate engagement, consistent with the policy of the order. It also directed the Secretary of Labor to strengthen ERISA fiduciary rules and increase fiduciaries' transparency regarding their use of proxy advisors, ensuring proxy advisors and plan managers act solely in the financial interest of American workers and retirees.[43]

C. Review of Current Regulation and Reasons for Change

The Department believes that, independent of the judgment in the litigation, select portions of the 2022 final rule may be construed as promoting investments with ESG-related investment strategies over other investments, contrary to the best reading of the ERISA statute. In singling out investments with ESG-related investment strategies as particularly appropriate for plans, the Department believes the 2022 final rule contravenes ERISA's historical neutrality standard which neither favors nor disfavors specific investment categories or classes. Favoring investments with ESG-related investment strategies in this way impermissibly suggests that nonfinancial factors (i.e., mixed motivations) may be introduced into investment decisions in

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[42] EO 14366, section 1.
[43] EO 14366, section 4.

violation of both the plain meaning of ERISA and the U.S. Supreme Court's interpretation of ERISA, which firmly establish that fiduciaries can consider only the benefits investments provide to plan participants and beneficiaries and plan participants' financial interests when making such decisions.

The Department has also reconsidered the viability of the so-called tiebreaker rule. The best reading of ERISA's duty of loyalty is and has always been that fiduciaries cannot consider issues and interests collateral to plan participants' financial interests and benefits during any part of the process they use to select investments. On its face, the tiebreaker rule permits just that. It therefore does not comport with the best reading of ERISA, and the Department believes that it should be rescinded.

Furthermore, the Department is concerned that the tiebreaker rule has facilitated fiduciaries' ability to conceal disloyal or otherwise suspect investment decisions. To the limited extent that any two proposed investments would possibly present identical risk-adjusted return profiles (i.e., "ties"), which would be the first step before the application of any purported "tiebreaker rule" for fiduciaries to consider collateral interests, investment selection must not operate such that nefarious actors can more easily disguise illegal loyalty breaches. Accordingly, some parties may have manufactured ties that did not exist as a pretext to make investment decisions that are otherwise impermissible under ERISA. Removing the tiebreaker rule will remove the incentive and opportunity for bad actors to engage in such pretextual behavior. The discussion of ESG in the 2022 final rule, when combined with the tiebreaker provision, also may have been interpreted by some persons as suggesting that nonfinancial factors can be introduced into fiduciary investment decisions. Such a construction would, in the Department's view, be in clear conflict with the plain language of the exclusive purpose requirement in ERISA.

Similarly, the Department is also concerned that language stating that a "fiduciary may not subordinate the interests of the participants and beneficiaries" does not capture the plain language or intent of ERISA, which establishes a more rigorous investment standard. A key

point underlying the district court's decision, and its analogy to a driver choosing the more scenic of two roads to its destination (discussed further below), is that the duty of loyalty under ERISA requires a fiduciary to start with a proper purpose – the fastest route in that analogy – and as the driver may not conduct the route selection with an eye on their scenic qualities, neither may the ERISA fiduciary keep in mind ulterior motives when making investment decisions. Just like a driver may not choose the fastest of the scenic routes, a fiduciary cannot choose the most financially rewarding of a limited pool of investments assembled because of their social impact. That is an improper purpose. And as ERISA's text makes clear, a fiduciary must begin with and maintain an exclusive focus on participant's financial benefits under the plan throughout the investment selection process. ERISA requires fiduciaries to consider only plan participants' financial interest, not simply that they avoid placing any other interest above it.[44] Thus, the Department is considering replacing the anti-subordination language with ERISA's more affirmative exclusive purpose construction.

A further concern is that the participant preferences portion of the rule also has sown confusion for plan fiduciaries. The language creates a kind of trap for the unwary to the extent it is taken to suggest that the consideration of participant preferences in the selection of a plan investment menu is an acceptable proxy for a rigorous consideration and determination on the economic merits. In selecting plan investment options, plan fiduciaries must act in participants' best interests even if plan participants might make different choices left to their own devices. The Department is concerned that this provision could be exploited by promotors, consultants, investment providers, and others who may market investments with ESG-related investment strategies to suggest to their plan sponsor clients that such funds with poor financial performance and/or high fees may be selected if enough plan participants want them. While this would be a

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[44] 29 U.S.C. 1104(a)(1)(A)(i) ("a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries.") (cleaned up).

misinterpretation of the existing regulatory standard, the Department is concerned that this misinterpretation may be widespread, which would be understandable given how the standard is currently articulated. The individual or collective preferences of participants can have no bearing on the fiduciary duties of plan sponsors under ERISA, and cannot determine whether an investment is objectively preferable to another.

D. Discussion of the Proposed Rule

1. Paragraph (b)(4) of the proposal.

The proposal would amend paragraph (b)(4) of the 2022 rule by removing "[r]isk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action." This language was added to the 2022 rule primarily because the Department wanted to clarify that, in some instances, depending upon the individual facts and circumstances, climate change and other environmental, social, or governance factors may be relevant in a risk-return analysis of an investment.[45] The intent of paragraph (b)(4) of the 2022 rule was to address stakeholders' assertions that the 2020 rule effectively chilled the market with respect to consideration of any climate change and other environmental, social or governance factors irrespective of whether the consideration of climate change and other environmental, social, or governance factors may have been particularly relevant in a risk-return analysis of an investment or investment course of action.[46] The proposal would remove this language because it may be misconstrued as suggesting that these factors (climate change and other environmental, social, or governance factors) are likely to be risk and return factors in any number of significant cases. While such factors can be relevant in some contexts, for example, where they present investment risks, the Department does not want to give the impression that they are in all or even most investment-selection decisions. Put differently, the Department is concerned that the 2022 clarification –

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[45] 87 FR 73822, 73830-31 (Dec. 01, 2022).
[46] 87 FR 73822 (Dec. 01, 2022).

with its explicit mention of these undefined and politically-loaded terms – has or will have had the effect of promoting, endorsing, or even encouraging investment behavior based on social or nonfinancial factors, distinctly independent from the economic merits of the investment at issue. The Department's intent is to restore neutrality and remove any perceived governmental approval of or preference for these factors absent economic merit.

The Department is hopeful that, by restoring neutrality through the removal of unnecessary references to ESG, the proposal will depoliticize this topic under ERISA. In this regard, the Department takes notice that ESG considerations have become the subject of substantial public controversy and legislative attention. Congress passed a joint resolution under the Congressional Review Act to disapprove the 2022 rule, which the President vetoed.[47] Several States have also enacted measures addressing ESG-related investing, ESG-related proxy voting, public pension decisions, or financial relationships with firms deemed to engage in boycotts of certain industries. Although State laws do not control the interpretation of ERISA, these developments underscore the degree to which the regulatory language itself has become contested and may distract from the neutral, unbiased fiduciary principles established by Congress in ERISA.

Likewise, the Department believes that neutral regulatory language would improve administrability. ERISA fiduciaries, service providers, and courts are familiar with the concepts of prudence, loyalty, diversification, and financial materiality. A regulation organized around those concepts may be easier to apply than one that is read through the lens of broader public debates about ESG. In the Department's view, regulatory clarity is especially important in the retirement plan context, where fiduciaries must make decisions on

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[47] H.J. Res. 30, 118th Cong. (2023); President Joseph R. Biden, Jr., Veto Message to the House of Representatives on H.J. Res. 30, 2023 Daily Comp. Pres. Doc. No. 202300218 (Mar. 20, 2023).

behalf of participants and beneficiaries whose interests are protected by ERISA's exclusive-purpose framework.

The Department further believes that removing ESG-associated language would better highlight ERISA's exclusive-purpose rule. The statutory question is whether fiduciaries are acting to provide benefits to participants and beneficiaries and to defray reasonable expenses of administering the plan. The Department is concerned that continued reference to ESG may, in some circumstances, be interpreted as signaling that collateral social or policy goals are independently relevant under ERISA. The Department does not believe that is the proper reading of the statute. Under the proposal, the regulation would more clearly state that the fiduciary's inquiry must remain tied to the economic interests of the plan participants.

In light of foregoing, the Department believes it is appropriate to propose amendments that remove ESG-associated language from paragraph (b)(4) of the current rule, while preserving fiduciaries' ability to consider all financially relevant information. By removing ESG-associated references, the proposal would clarify that ERISA neither favors nor disfavors any investment label or ideology. Rather, the regulation would focus on the fiduciary process required by statute that looks exclusively to plan participants' financial interests.

The Department stresses, however, that the proposed amendment would not create a categorical prohibition on considering any type of information. Proposed paragraph (b)(4) includes identical language from paragraph (b)(4) of the current regulation providing that a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, and that whether any particular consideration is a risk-return factor depends on the individual facts and circumstances. Thus, under the proposal, a fiduciary may consider any factor that the fiduciary reasonably determines is relevant to the risk-and-return analysis. The proposal is intended to remove potential distractions, not to prevent fiduciaries from

analyzing financially relevant facts. This neutral framework would give a fiduciary flexibility and discretion in engaging in an objective and thorough investment analysis as it encounters new risks and opportunities, and as investments and the investment marketplace change over time. It would not, based on mere labels, impose limits that automatically force a fiduciary to question soundly-reasoned investment approaches taken by other market participants, or to analyze investments differently than how other investors would. Instead, as with all other decisions under ERISA, it would give fiduciaries the flexibility to consider the relevant information under the circumstances to act in plan participants' financial interest. If adopted, plan fiduciaries would be required to comply with this rule for both new and existing investments by using the ongoing investment monitoring that ERISA requires to ensure that both comply with the final rule. To be clear, the proposed rule does not necessarily require fiduciaries to divest or terminate any existing investment, investment course of action, or designated investment alternative. This proposed rule will apply only prospectively. Fiduciaries should do what they must always do under ERISA: continually evaluate their investments for their consistency with plan participants' and beneficiaries' financial interests and the Department's best interpretation of ERISA's duty of loyalty, as set forth in this rule.

At the same time, however, this proposed rule's prospective application does not immunize fiduciaries' actions and investment selections prior to the rule's effectiveness from enforcement actions and potential liability under ERISA provisions, duties, or mandates. Consistent with the relevant statutes of limitation, regulated entities must not construe this rule to reduce the Department's ability to investigate and prosecute fiduciaries for actions that were illegal while the prior rules were in effect. To that end, the Department recognizes the reliance interests that fiduciaries might have had related to how they may have made investment decisions based on any flawed interpretation of the best reading of ERISA's duty of loyalty subsequent to the 2022 final rule. The Department seeks comments regarding these

reliance interests associated with the 2022 rule and the interaction of the regulatory text with prior investment decisions.

Relatedly, the Department seeks comments on what has caused the large outflow from ESG funds in recent years, and more specifically, whether this trend is reflected in ERISA plan investments.

2. Paragraph (c)(1) of the proposal.

The proposal would amend paragraph (c)(1) of the 2022 rule by removing the phrase "may not subordinate" and replacing it with "shall discharge his duties with respect to the plan with the exclusive purpose of maximizing." Thus, in its entirety, paragraph (c)(1) of the proposal would read as follows: "A fiduciary shall discharge his duties with respect to the plan with the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to financial interests of the participants and beneficiaries in their retirement income or financial benefits under the plan."

The intent of these proposed changes is to enhance the protectiveness of the regulation by better aligning it with the text of ERISA. In particular, section 404(a)(1)(A) of ERISA, in relevant part, provides that "a fiduciary shall discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries."[48] While the more limited anti-subordination language has been the Department's sub-regulatory position for more than 30 years and regulatory position for 6 years, the statutory text of section 404(a)(1)(A) plainly demands a more rigorous, financially-motivated standard when selecting investments than simply "not

[48] 29 USC 1104(a)(1)(A) (internal punctuation omitted).

subordinating" participants' financial interests to nonfinancial objectives.[49] And although the anti-subordination language has been used as support for the Department's tiebreaker test, as explained below, this proposal would eliminate the tiebreaker test. The new language also reflects the best reading of the statute.

The current regulation's loyalty provision, at paragraph (c)(1), contains two prohibitions: first, against subordination of participants' interests to other objectives; second, against sacrificing return or taking on additional risk to promote goals unrelated to participants and beneficiaries. Because the provision is limited to setting forth prohibitions, it merely identifies conduct that would violate ERISA's loyalty requirement. This prohibition-based formulation may be misconceived as permitting consideration of collateral objectives so long as participants' financial interests are not ultimately subordinated.

The proposed amendment, by contrast, sets forth a more affirmative expression of the duty of loyalty under ERISA. This more affirmative expression of ERISA's duty of loyalty is framed not as an abstract duty to "maximize" returns without regard to other fiduciary constraints, but as a duty to maximize participants' and beneficiaries' financial interests on a risk-adjusted basis, consistent with the plan documents and ERISA's prudence, diversification and expense limitations**.**

The Supreme Court has explained that ERISA's fiduciary standards have their origins in the common law of trusts,[50] and the Second Circuit has stated that these standards require fiduciaries to act with an "eye single to the interests of the participants and beneficiaries."[51] As the Supreme Court explained when interpreting the National Labor Relations Act's similar duty of loyalty, "[a] fiduciary cannot contend that, although he had conflicting interests, he served his masters equally well or that his primary loyalty was not weakened by the pull of his secondary

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[49] See, e.g., *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 420-21 (2014) (discussing the connection between the duty of loyalty and financial objectives.)
[50] *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570–71 (1985).
[51] *Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982) (holding fiduciaries may not subordinate participant interests to those of the corporation in responding to a takeover bid).

one."[52] They have also held that fiduciaries may not permit "union, employer or self interests" to influence plan administration.[53] The Supreme Court has likewise emphasized that ERISA incorporates the duty of prudence, again with its origin in trust law, including an ongoing obligation to monitor investments and remove imprudent ones,[54] and, where materially better financial terms are available to participants, courts have held that fiduciaries must act to secure those advantages.[55]

These authorities support the proposition that ERISA requires fiduciaries to pursue only the course of action that best advances participants' and beneficiaries' financial interests—maximizing expected benefits net of reasonable expenses, and subject to prudent risk management, diversification, and plan terms—rather than merely not subordinating their interests to other objectives.[56] The text in paragraph (c) of the proposal reflects these principles.

The proposal's reference to "maximizing interests of the participants and beneficiaries . . . *under the plan*" (emphasis added) is to make clear that the "maximizing interests" obligation is to be understood in relation to, and with a focus on the benefits under the plan, rather than an obligation solely to pursue the highest investment return in all cases. For instance, the Department does not intend the "maximizing" language to be interpreted as compelling a fiduciary to make investment decisions focused on maximizing return on plan investments while ignoring prudence, risk, diversification, liquidity, funding obligations, or any other factors required or relevant with regard to providing promised benefits under the plan. Similarly, the

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[52] *NLRB v. Amax Coal Co.*, 453 U.S. 322, 330 (1981).
[53] *Leigh v. Engle*, 727 F.2d 113, 124–25 (7th Cir. 1984) (holding fiduciaries breached duties where divided loyalties affected plan investment decisions).
[54] *Tibble v. Edison Int'l*, 575 U.S. 523, 528–30 (2015) (holding fiduciaries have a "continuing duty to monitor trust investments and remove imprudent ones"); *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 418–19 (2014) (stating that ERISA's duty of prudence stems from "the common law of trusts").
[55] See *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197–98 (9th Cir. 2016) (holding fiduciaries breached ERISA by retaining higher-cost retail-class funds when otherwise identical lower-cost institutional shares were available); *Hughes v. Nw. Univ.*, 595 U.S. 170, 176–77 (2022) (reaffirming that fiduciaries must continually monitor plan investments and remove imprudent options).
[56] See also *Bd. of Trs. of the CWA/ITU Negotiated Pension Plan v. Weinstein*, 107 F.3d 139, 146 (2d Cir. 1997) (stating that "[t]he duty of loyalty requires trustees to administer the trust solely in the interest of the participants and beneficiaries"); *Deak v. Masters, Mates & Pilots Pension Plan*, 821 F.2d 572, 580–82 (11th Cir. 1987) (invalidating fiduciary action that served institutional interests rather than the exclusive interests of participants).

Department also does not intend this language to prohibit a defined benefit plan fiduciary from using a liability-driven investment strategy to reduce the risk of underfunding to the plan.[57] Nor is this "maximizing" obligation violated merely because a counterparty benefits from a transaction with a plan.[58]

3. Removal of the tiebreaker provision—paragraph (c)(2).

In adopting the 2020 final rule, the Department expressed doubt that ties ever occur, but nonetheless included a tie breaker provision. In proposing the rule, the Department set forth the proposition that true ties may theoretically occur, acknowledged that it currently lacked sufficient evidence to say that they do not, and solicited comments on the matter.[59] The 2020 tiebreaker provision provided that if a fiduciary was unable to distinguish investment alternatives on the basis of pecuniary factors, the fiduciary could then, in effect, break the tie by relying on non-pecuniary factors.[60] Importantly, to safeguard against improperly finding a tie in order to rely on non-pecuniary factors, the 2020 tiebreaker provision included a requirement that fiduciaries adequately document occurrences of ties.[61]

The final rule adopted in 2022 amended the tiebreaker provision by modifying the standard for finding a tie. The 2022 final rule also removed the documentation requirement from the tiebreaker provision.

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[57] *See* Advisory Opinion 2006-08A (Oct. 3, 2006).
[58] *See Donovan v. Walton*, 609 F. Supp 1221, 1245 (S.D. Fla. 1985) ("Even without these benefits to the Fund, ERISA section 404(a)(1)(A) simply does not prohibit a party other than a plan's participants and beneficiaries from benefiting in some measure from a prudent transaction with the plan. Furthermore, by adopting the 'exclusive purpose' standard, Congress did not intend to make illegal the fact of life that most often a transaction benefits both parties involved."). *See also Johnson v. Radian Group, Inc.*, 2009 WL 2137241 (E.D. Pa. July 16, 2009) ("[T]he mere fact that a fiduciary has an adverse interest, or that a fiduciary's action incidentally benefits an employer, does not show that a fiduciary has breached the duty of loyalty . . . Rather, ERISA plan fiduciaries violate the duty of loyalty when they actually act in the interests of the plan sponsor or of themselves rather than for the sole benefit of the participants and beneficiaries of the Plan.") (citations omitted). *Cf. Rev. Rul. 69-494*, 1969-2 CB 88 (pre-ERISA requirement under the Internal Revenue Code that the primary purpose of benefiting employees or their beneficiaries must be maintained with respect to the trust funds of an exempt employees' trust but does not prevent others from also deriving some benefit from a transaction with the trust).
[59] 85 FR 39117 (June 30, 2020).
[60] 85 FR 72884 (Nov. 13, 2020).
[61] 85 FR 72884.

The Department is proposing to rescind the tiebreaker provision and remove it from the regulation. The best reading of ERISA's exclusive purpose rule requires and has always required that fiduciaries act solely to provide plan participants with benefits, and to look only to their financial interests during the process of making investment-selection decisions.[62] The tiebreaker rule seems to obviate this principle by letting fiduciaries consider collateral interests when selecting investments, while also facilitating unlawful conduct. At best, assuming a fiduciary started with a proper purpose, the provision merely serves as a mechanism that facilitates choosing between investments that would each equally benefit a plan in terms of anticipated returns on a risk-adjusted basis, and therefore does not appear to provide a plan with any overall financial benefit. This is because the selection of either investment would place the plan in the same economic position.

On the other hand, at its worst, the provision is susceptible to abuse and may be easily employed by a fiduciary as pretext as it uses plan assets to pursue objectives unrelated to the plan and its participants and beneficiaries. In practice, a fiduciary inclined toward a particular collateral objective may have an incentive to characterize competing investments as economically equivalent in order to invoke the tiebreaker provision. Once a tie is found, the regulation expressly permits reliance on collateral benefits, thereby creating a pathway through which nonfinancial considerations may influence an investment decision. This concern is heightened because the current provision singles out collateral interests for special treatment. If two investments equally serve the financial interests of the plan, a fiduciary may choose between them for a variety of reasons. The regulation, however, specifically identifies collateral interests as a permissible basis for selection, which may encourage reliance on considerations unrelated to providing benefits under the plan.

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[62] 29 USC 1104(a)(1)(A)(i); *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 420-21 (2014).

The Department acknowledges that a district court has held that the tiebreaker rule is consistent with the best reading of ERISA's duty of loyalty.[63] In relevant part, the court stated that when the fiduciary identifies competing investment courses of action that all "equally serve the financial interests of the plan," then any choice between those actions is in the sole interest of the beneficiary and for the exclusive purpose of maximizing his financial benefits. According to the court, under these circumstances, all options the fiduciary faces accomplish, and do not evade, the fiduciary's duty of loyalty. The district court's opinion included a driving analogy to illustrate its reasoning:

> Just as a driver, duty-bound to choose the fastest route to his destination, may choose the most scenic of two routes that each bring him to his destination at the same time, so too can a fiduciary choose a preferable investment option between two that will equally satisfy his duty of loyalty. When the driver takes the most scenic of the two fastest, he does not act for a different purpose than taking the fastest route - he did choose the fastest route. The fact it is also scenic does not mean he employed another purpose at all. If he had chosen the two most scenic routes - and then selected the fastest of the two - he would have acted with an impermissible purpose. He could choose the most scenic of fast routes but could not choose the fastest of scenic routes. The order elucidates his exclusive purpose.[64]

Under the district court's interpretation, ERISA's exclusive purpose rule focuses on results and anti-subordination: so long as a fiduciary never selects a financially inferior investment and never lets collateral interests overtake plan participants' financial interests in making the investment choice, the fiduciary does not violate its duty of loyalty.

The Department believes the district court's analysis is not consistent with the best reading of ERISA's duty of loyalty. The district court ignored that ERISA's duty of loyalty focuses on process and not outcome. It demands that fiduciaries act with an "eye single" towards plan participants' and beneficiaries' financial interests when making fiduciary decisions[65] for the "exclusive purpose of providing benefits" to them.[66] Simply put, exclusive means exclusive,[67]

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[63] *See Micone*, 766 F. Supp. 3d at 679–80.
[64] Id. at 680.
[65] *Pegram v. Herdrich*, 530 U.S. 211, 235 (2000) (quoting *Donovan*, 680 F.2d at 271).
[66] 29 U.S.C. 1104(a)(1)(A)(i).
[67] *See* Black's Law Dictionary (defining exclusive as "whole, undivided").

and single means single.[68] A fiduciary cannot conduct a process to select investments with a "single-minded purpose" toward plan participants' and beneficiaries' financial interests if it considers other interests as it does so, even if only in the limited circumstances the tiebreaker rule permits, and without subordination to financial interests.[69] Not subordinating those financial interests to collateral interests or avoiding putting them on equal footing also does not suffice; using the district court's analogy, ERISA demands not only that the driver choose the fastest route to his destination, but also extricate all other factors from the process by which he chooses that route. ERISA's duty of loyalty and its exclusive purpose rule give plan participants and beneficiaries more procedural protection than the district court allowed, and the Department therefore disagrees with its holding that the tiebreaker rule is consistent with the best reading of ERISA. The Department is interested in comments regarding whether the tiebreaker rule is consistent with ERISA's duty of loyalty.

The Department acknowledges that it previously expressed confidence in the protectiveness of the 2022 tiebreaker provision based on other requirements under ERISA and the regulation,[70] but it is re-evaluating that conclusion in light of a recent court decision involving ERISA's loyalty requirement that highlights the potential for business relationships and nonfinancial conflicts involving persons acting in the investment marketplace that may influence a fiduciary's decisions,[71] as well as other proposed changes to paragraph (c) of the regulation, discussed earlier.

The Department also continues to have doubts as to the existence of ties, and the need for a tiebreaker provision. In explaining the usefulness of the tiebreaker provision in the 2022 rule, the Department stated that "[a]lthough some fiduciaries, by the nature of their arrangements with plans, may apply investment strategies that never require them to choose between alternatives

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[68] *See* Oxford English Dictionary (defining single as "[o]ne only; one and no more").
[69] *Cent. States, Se. & Sw. Areas Pension Fund*, 472 U.S. at 570–71.
[70] 87 FR 73836.
[71] *See, e.g.*, *Spence v. American Airlines*, 775 F. Supp. 3d 963 (N.D. Tex. 2025) (finding a breach of ERISA's duty of loyalty but not ERISA's duty of prudence).

that equally serve the plan's needs, other fiduciaries, such as those making investments outside liquid financial markets, may find the tiebreaker test useful for circumstances in which there are equally strong cases for competing investments under a risk-return analysis."[72] The Department is interested in comments on fiduciaries' experience in evaluating different types of investments, and on whether the Department's assessment of the types of plan engagements with investment fiduciaries and plan investment opportunities described above is reasonable and reflective of the current environment. Additionally, the Department is interested in comments on whether there have been any changes in the investment marketplace or advances in investment analysis since its earlier non-regulatory guidance on fiduciary consideration of collateral effects and interests (e.g., IB 94-1) that would obviate the need for a plan fiduciary, acting in accordance with its duty of prudence under ERISA, to choose among competing investments.

Irrespective of whether it would be reasonable for a fiduciary to conclude that multiple investments are tied, a tiebreaker provision may not be needed. A tiebreaker provision is only necessary if the fiduciary seeks to break a tie based on a collateral interest other than investment return.[73] A fiduciary could resolve an ostensible tie by making a non-arbitrary choice between investments' financial and other features that directly benefit plan participants, and indeed that is exactly what would have to be done in that situation by a fiduciary that did not have a focus on collateral interests such as ESG. Doing so comports with ERISA's text, which requires fiduciaries act exclusively to "provide benefits to participants and their beneficiaries."[74] Just as any one potential investment may have a certain risk-return profile, so too will it have a variety of other distinguishing benefits for plan participants. These are not merely collateral interests, but instead are additional financial-adjacent benefit or value to participants that may properly serve as a basis for a decision. For instance, a fiduciary could use factors such as the customer

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[72] 87 FR 73836.
[73] 87 FR at 73837.
[74] 29 USC 1104(a)(1)(A)(i).

service offered to participants by a fund or the fiduciary's assessment of the fund's operations to break an ostensible tie. Moreover, even if it were otherwise permissible to make an investment-related decision based on a collateral interest, fiduciaries would have to remain cognizant of their obligations to ensure they are not engaging in a transaction prohibited by ERISA section 406. For instance, if the collateral interest involves a party in interest to the plan (e.g., an employer whose employees are covered by the plan or a union whose members are covered by the plan), a prohibited transaction may occur.[75]

Because of the Department's serious doubts that it comports with the best reading of ERISA, potential risk to participants' retirement security from its abuse, and the possibility that the provision does not provide any benefit to plans, the Department does not believe the tiebreaker rule should be included in the regulation. The Department is of the preliminary view that the regulation should not contain a provision that encourages reliance on collateral factors instead of financial benefits in fiduciary investment selection, and thus potentially incentivizes fiduciaries to characterize investments as economically equivalent as a pretext for advancing collateral objectives over financial interests. The Department is interested in comments evaluating the tiebreaker provision's legality and consistency with ERISA, as well as comments on whether eliminating the tiebreaker provision will change plan costs or types of investments. The Department requests comment on whether the removal of the tiebreaker provision could lead to greater compliance certainty and related decreases in costs or burdens on plan fiduciaries in evaluating investments or investment courses of action, or could lead to greater uncertainty and related increases in costs or burdens. The Department is also interested in comments on whether eliminating the tiebreaker test will reduce the instances of non-exempt prohibited transactions.

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[75] See, e.g., Advisory Opinion 85-36A (Oct. 23, 1985) (certain investment arrangements may involve a use of plan assets for the benefit of a party in interest in violation of ERISA section 406(a)(1)(D)); Information Letter to Ralph P. Katz (Mar. 15, 1982) (purchase by a plan of an insurance policy pursuant to an arrangement under which it is expected that the insurance company will make a loan to a party in interest is a prohibited transaction).

The Department notes that, as discussed above, it is proposing changes to paragraph (c)(1) of the regulation, which addresses ERISA's duty of loyalty, to make clear that a fiduciary must discharge his duties with respect to the plan for the exclusive purpose of maximizing the interests of plan participants and beneficiaries in their retirement income or financial benefits under the plan. If the change to paragraph (c)(1) is finalized as proposed, the Department believes that complying with its requirement to maximize the interests of participants and beneficiaries might reduce the likelihood of reaching any ties in evaluating competing investments.

ERISA's plain language does not allow for collateral considerations or mixed motivations. The duty of loyalty mandates that fiduciaries act "solely" and "for the exclusive purpose of" providing "benefits to participants and their beneficiaries." "Exclusive" means that fiduciaries must act for the "whole, undivided" purpose of securing proper benefits for participants and beneficiaries.[76] And "solely" is defined as "to the exclusion of all else."[77]

4. Removal of the participant preference provision—paragraph (c)(3).

The 2022 final rule added a provision stating that fiduciaries do not violate their duty of loyalty solely because they take participants' preferences into account when constructing a menu of prudent investment options for participant-directed individual account plans.[78] In adopting the provision, the Department expressed the view that accommodating participants' preferences could lead to greater participation and higher contribution rates, leading to greater retirement security.[79] However, the Department cautioned that plan fiduciaries may not add imprudent investment options just because participants may request or prefer them.[80]

The Department is proposing to remove this provision to clarify that participant preference, in and of itself, is a not legitimate basis for a fiduciary to select a plan investment

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[76] Black's Law Dictionary
[77] Merriam-Webster Dictionary
[78] 29 CFR 2550.404a-1(c)(3)
[79] 87 FR at 73842.
[80] Id.

option. Despite the caution to plan fiduciaries in the preamble to the 2022 final rule that participant preference would not justify imprudent investment options, the Department is concerned that the provision as articulated in the regulatory text may nevertheless be a trap for the unwary. A fiduciary's duties of prudence and loyalty under ERISA do not change based on participant preferences.

In this regard, the Department is concerned that this provision of the 2022 final rule creates a misperception that it is acceptable to sacrifice investment performance to obtain greater participation in the plan and higher contribution rates. The participant preference provision may convey that a fiduciary may select an underperforming or high fee fund merely because some employees want an ESG or other social-themed fund. However, this runs counter to the fundamental principle that, even in a participant-directed plan, plan fiduciaries "must conduct their own independent evaluation to determine which investments may be prudently included in the plan's menu of investment options."[81] Greater participation and higher contribution rates are both laudable objectives but a fiduciary may not, consistent with ERISA's duty of loyalty, sacrifice performance to pursue either objective.

The misperception created by the participant preference provision may also be exploited by promotors, consultants, investment providers, and others who may market investments with ESG-related investment strategies to fiduciaries based solely on participant preference. Plan fiduciaries may feel the need, at the very least, to expend plan resources unnecessarily on investigating and evaluating participant preferences and such potential investments that the fiduciary otherwise may determine to be imprudent. On balance, the Department believes the participant preference provision has the potential to undermine compliance with ERISA's high fiduciary standards. In close-call scenarios, for example, this provision presents a significant risk

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[81] *Hughes v. Northwestern University*, 595 U.S. 170, 176 (2022) (citing *Tibble v. Edison Int'l,* 575 U.S. 523, 529-30 (2015)); *see also* 29 CFR 2550.404c-1(d)(2)(iv) (limited liability afforded under ERISA section 404(c) does not relieve a fiduciary from its duty to prudently select designated investment alternatives offered under the plan).

of being misused by decision-makers. Such misuse not only jeopardizes the best interests of plan participants and beneficiaries but also erodes the essential standard of care that fiduciaries are obligated to uphold.

Removing the participant preference provision is consistent with removing the tiebreaker provision as well. As discussed above, the Department is concerned that the tiebreaker provision is susceptible to abuse and may be used easily by a fiduciary as a pretext to use plan assets in pursuit of objectives unrelated to the plan and its participants and beneficiaries. The participant preference provision appears equally susceptible to such abuse. The Department believes eliminating both these provisions will bring the regulation in line with the best reading of ERISA's exclusive purpose requirement. To be clear, removal of the provision is not intended to signal that fiduciaries are prohibited from listening to participant preferences. However, if acting on participant preferences, fiduciaries must do so in accordance with their duties of prudence and loyalty under ERISA. The Department requests comment on whether this should be reflected in the regulation. More generally, the Department is interested in comments on whether there are any situations in which participant preferences with respect to plan investment options could be useful to fiduciaries in meeting their ERISA responsibilities of prudence and loyalty, and that would be facilitated by paragraph (c)(3).

5. Proxy voting and exercise of shareholder rights.

5.1. Modifying paragraphs (d)(2)(i), and (d)(2)(ii)(C) and (E) with respect to exercising shareholder rights.

The Department is proposing to amend paragraph (d)(2) to include an explicit reference to shareholder engagement to make clear that, like proxy voting, decisions relating to shareholder engagement are subject to ERISA's fiduciary responsibility provisions and the Investment Duties regulation that would be amended by this proposed rule. Each Interpretive Bulletin that addressed ERISA fiduciary responsibilities with respect to exercise of shareholder

rights, discussed above, also included provisions related to shareholder engagement.[82] The Department intended the 2020 and 2022 amendments to the Investment Duties regulation to cover fiduciary responsibilities with respect to shareholder engagement.[83] The Department, therefore, is proposing to add specific reference to "shareholder engagement" to the regulatory text in paragraphs (d)(2)(i) and (d)(2)(ii)(E) reflecting this. The Department is also proposing to add to paragraph (d)(2)(i) a reference to any other related investment courses of action because there may be some confusion as to whether the exercise of shareholder rights constitutes an "investment course of action" as defined in the regulation. In addition, the Department is proposing to add a broad reference to "other rights accompanying share ownership" in paragraph (d)(2)(ii)(E) to avoid the misperception that the list of activities included in that paragraph is limiting rather than illustrative.

As proposed, paragraph (d)(2)(i) would state that when deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, *shareholder engagement* and any other related investment courses of action, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan. In relevant part, proposed paragraph (d)(2)(ii)(E) would provide that when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must exercise prudence and diligence in the selection and monitoring of persons, if any, selected to exercise shareholder rights or otherwise advise on or assist with exercises of shareholder rights, such as providing research and analysis,

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[82] See 81 FR at 95884 (IB 2016-01); 73 FR at 61734 (IB 2008-02); 59 FR at 38864 (IB 94-2). The preamble to IB 94-2 explained: "The Department believes that, where proxy voting decisions may have an effect on the value of the plan's underlying investment, plan fiduciaries should make proxy voting decisions with a view to enhancing the value of the shares of stock, taking into account the period over which the plan expects to hold such shares. Similarly, in certain situations it may be appropriate for a fiduciary to engage in activities intended to monitor or influence corporate management if the fiduciary expects that such activities are likely to enhance the value of the plan's investment." 59 FR at 38862.

[83] See, e.g., 87 FR at 73845 (the 2022 removal of certain language in the 2020 final rule was not meant to indicate that fiduciaries must always vote proxies or engage in shareholder activism).

recommendations regarding proxy votes, *shareholder engagement*, administrative services with voting proxies, recordkeeping and reporting services, *and all other rights accompanying share ownership*. Although these proposed changes are intended to reflect sub-regulatory guidance relating to engagement activities, described above, we solicit comment on whether proposed use of the term "shareholder engagement" in paragraphs (d)(2)(i) and (d)(2)(ii)(E) would be confusing or misaligned with the common understanding of a shareholder right, and whether a more appropriate term could be used.

The Department also is proposing to amend paragraph (d)(2)(ii)(C), which currently provides in relevant part that when deciding whether to exercise shareholder rights and when exercising shareholder rights, the fiduciary must not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any other objective. Paragraph (d)(2)(ii)(C) reflects paragraph (c)(1) of the current regulation which, as discussed earlier, the Department is proposing to amend to better reflect the statutory language of ERISA's loyalty provision. Accordingly, the Department is proposing amendments to paragraph (d)(2)(ii)(C) that would conform with proposed amendments to paragraph (c)(1). As proposed, paragraph (d)(2)(ii)(C) would require that, with respect to exercise of shareholder rights, fiduciaries must discharge their duties with respect to the plan with the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan.

At the same time, the Department proposes to restore the statement that the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right. As it was when it promulgated the 2020 rule, the Department is concerned that the Avon Letter and subsequent sub-regulatory guidance from the Department has resulted in a misplaced belief among some stakeholders that fiduciaries must always and in every case vote proxies, subject to limited exceptions, to fulfill their obligations under ERISA. For instance, IB 94-2 included language indicating that in deciding whether to

vote shares of foreign stock, a fiduciary could consider any additional costs that would be incurred.[84] The Department believes that making this clear will reduce unnecessary confusion on the issue and further promote clarity in the law like the rest of the proposed regulation. Additionally, in the 2020 notice of proposed rulemaking, the Department considered adding language to the regulation indicating that it would be permissible for a fiduciary to adopt a policy of voting proxies in accordance with the voting recommendations of management of an issuer on proposals or particular types of proposals that the fiduciary has prudently determined are unlikely to have a significant impact on the value of the plan's investment, subject to any conditions determined by the fiduciary as requiring additional analysis because the matter being voted upon may present heightened management conflicts of interest or is likely to have a significant economic impact on the value of the plan's investment.[85] After considering public comment, as well as the Department's separate decision to remove in the 2020 final rule a proposed requirement not to vote in certain situations, the Department decided to not include that language in the 2020 final rule.[86] We are seeking comment on whether there have been any changes to the legal and regulatory landscape since 2020 that should cause the Department to reconsider whether fiduciaries can fulfill their obligations under ERISA under the circumstances described in the 2020 notice of proposed rulemaking.

E. Request for Public Comments

The Department invites comments from interested persons on all facets of the proposed amendments to 29 CFR 2550.404a-1. Comments should be submitted in accordance with the instructions at the beginning of this document.

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[84] 59 FR at 38,863.
[85] 85 FR at 55,242 (proposed 2550.404a-1(e)(3)(iii)(A)).
[86] 85 FR at 81,673.

F. Regulatory Impact Analysis

The Department of Labor has examined the effect of the proposal as required by Executive Order 13563,[87] Executive Order 12866,[88] the Regulatory Flexibility Act,[89] section 202 of the Unfunded Mandates Reform Act,[90] Executive Order 13132,[91] and Executive Order 14192.[92]

1. Executive Orders

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, "significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

1) Have an annual effect on the economy of $100 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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[87] 76 Fed. Reg. 3821 (Jan. 21, 2011).
[88] 58 Fed. Reg. 51,735 (Oct. 4, 1993).
[89] Pub. L. 96–354, 94 Stat. 1164 (Sept. 19, 1980).
[90] Pub. L. 104–4, 109 Stat. 48 (Mar. 22, 1995).
[91] 64 Fed. Reg. 43,255 (Aug. 9, 1999).
[92] 90 Fed. Reg. 9065 (Jan. 31, 2025).

4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

OMB has determined that this proposed rulemaking is significant within the meaning of section 3(f)(1) of the Executive Order. The Department has provided an assessment of the potential costs, benefits, transfers, and alternatives and OMB has reviewed this proposed rule.

Executive Order 14192, titled "Unleashing Prosperity Through Deregulation," was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed when the agency issues a new regulation. In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with prior regulations. A significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero is considered an Executive Order 14192 regulatory action.

2. Need for Regulation

The proposed rule is intended to address a number of general concerns. First, that prior rulemaking regarding the incorporation of nonfinancial factors into a plan's investment policy strayed from the Department's neutrality stance regarding investment categories or classes. Second, that some investment managers managing plan assets are engaging in shareholder activities that are not in the economic interests of plans, participants, and beneficiaries. Third, that managers may be using the prior rulemaking's tiebreaker and participant preference provisions to engage in conduct otherwise not permitted by ERISA's exclusive purpose obligations. Further, by clarifying that ERISA neither favors nor disfavors any investment objective or strategy, the proposal would depoliticize ESG issues under ERISA and bolster confidence of plan fiduciaries in the conduct of their ERISA-regulated activities.

By clarifying the role of nonfinancial factors in the selection of investment options, plan fiduciaries would be less likely to choose investments that do not maximize the interests of the

participants and beneficiaries in their retirement income or financial benefits under the plan. This should prevent plan fiduciaries from choosing funds with lower risk-adjusted returns or higher fees simply because their social or nonfinancial factors aligned with the plan fiduciary's or participants' preferences.

Additionally, by clarifying that fiduciaries must act with the exclusive purpose of providing benefits to participants and beneficiaries when deciding whether to engage in shareholder activities and when carrying out those activities (i.e., proxy voting, shareholder engagement, and other related investment actions), the Department believes the proposed rule would preclude resources from being devoted to proxy voting or shareholder activities that do not benefit plans or participants. As a result, the proposed rule's clarifications regarding a fiduciary's duty when selecting investment options and exercising shareholder rights should increase expected financial outcomes for plans and participants.

2.1. Nonfinancial Factors in Selection of Investments

Section 404(a)(1)(A) of ERISA, in relevant part, requires that "a fiduciary shall discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries."[93] The Department of Labor states that a fiduciary's primary responsibility is "to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses."[94] This proposal would clarify how that statement applies with respect to nonfinancial factors and plan fiduciaries selecting investments. Such clarification is needed because the 2022 rule creates the potential for fiduciaries to abuse the use of nonfinancial factors in investment selection. The issue is of growing importance since data suggests that the use of nonfinancial factors in the selection of investment options in ERISA plans has been expanding in

[93] 29 U.S.C. 1104(a)(1)(A) (internal punctuation omitted).
[94] The Dep't of Labor, *Fiduciary Responsibilities*, https://www.dol.gov/general/topic/retirement/fiduciaryresp.

recent years. The share of defined contribution ("DC") plans with at least one investment with ESG-related investment strategies increased markedly between 2019 and 2024.[95]

It is essential that plan fiduciaries understand that it is permissible to consider only factors that affect an investment's risk and return when making investment selections. The 2022 rulemaking allows for fiduciaries to use nonfinancial factors, such as ESG considerations, in cases where they claim that competing investments equally serve the financial interests of the plan. The existence of authentic ties has been questioned by some parties, arguing that there are always distinctions between investments in terms of their risk and return characteristics and a litany of other factors.[96] Moreover, plan fiduciaries, in the process of conducting their responsibilities, encounter similar circumstances when comparing available investments to each other, and still make a selection. This implies they can handle situations with similar investments, both those ESG-related and otherwise, in the same manner; a tiebreaker provision is not required.

The Department is concerned that the tiebreaker provision creates an opportunity for misuse. Plan fiduciaries who want to use ESG or other nonfinancial factors when selecting investments may manufacture inauthentic ties in order to justify investment selections that would otherwise be impermissible under ERISA. If plan fiduciaries are manufacturing ties as a pretext in order to pursue ESG investing, then the proposed rule, by removing the tiebreaker provision and affirming that plan fiduciaries must act with the exclusive purpose of maximizing the financial interests of participants and beneficiaries, would lead to plan fiduciaries discontinuing their use of nonfinancial factors in their investment selections.

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[95] Plan Sponsor Council of America, *Annual Survey of Profit Sharing and 401(k) Plans*, 2020-2025. Vanguard, *How America Saves*, 2020-2025.

[96] Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee,* Stanford Law Review, 72 (Feb. 2020), https://review.law.stanford.edu/wp-content/uploads/sites/3/2020/02/Schanzenbach-Sitkoff-72-Stan.-L.-Rev.-381.pdf.

The 2022 rulemaking also stated that when constructing an investment menu, a fiduciary would not violate its duty of loyalty solely because it considers participants' preferences, including demand for nonfinancial factors, in a manner consistent with its duty of prudence. The Department is concerned that plan fiduciaries may be similarly using the participant preference provision as a pretext to engage in behavior otherwise impermissible under ERISA. They also may be misunderstanding the provision to mean that ERISA's fiduciary duties change because of participant preferences.

Overall, there are several aspects of the proposal that are intended to eliminate nonfinancial selection criteria in ERISA plans, which will ensure that plans instead focus on an investment's risk and return profile. This will in turn lead to better investment performance for ERISA plans and participants in the long run, as described in more detail below in the Benefits section.

2.2. Shareholder Rights

Paragraph (d)(2)(ii) of § 2550.404a-1 requires that "[w]hen deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must [. . . a]ct solely in accordance with the economic interest of the plan and its participants and beneficiaries [and] [c]onsider any costs involved."[97] Most plans delegate the management of plan assets to investment managers,[98] and the Department has consistently maintained that the fiduciary duty to manage plan assets includes the management of shareholder rights of such assets. While many service providers regularly engage in behavior that renders them ERISA fiduciaries (e.g., proxy advisory firms in certain circumstances and investment managers directly managing funds), others, such as investment managers of mutual funds, are not. Plan fiduciaries are required to act with prudence and diligence when selecting and monitoring service providers regardless of the

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[97] *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 87 Fed. Reg. 73,822 (Dec. 1, 2022).
[98] See the Affected Entities section for a discussion.

fiduciary status of the service provider, including persons selected to exercise, advise on, or assist with shareholder rights. Prudence would require fiduciaries to monitor any decisions made and actions taken by investment managers (and other fiduciary service providers) with regard to the exercise of shareholder rights.

The Department is concerned that some investment managers managing plan assets continue to exercise plan shareholder rights, utilize plan assets, or devote resources in furtherance of activities that are not focused on the economic interests of participants and beneficiaries. The proposed rule clarifies that fiduciaries, which may include proxy advisory firms in certain circumstances, must act solely to maximize participants' and beneficiaries' financial benefit when deciding to exercise, or exercising, shareholder rights. They must also be prudent and diligent in choosing and monitoring those who manage or advise on share ownership rights. The discussions below expand on how trends in proxy voting, shareholder engagement, and the use of proxy advisory firms motivate the need for the proposed amendments to paragraph (d)(2)(ii).

2.2.1. Trends in Proxy Voting

An investor who owns common stock has certain formal shareholder rights, including the right to participate in annual and special shareholder meetings and vote on major corporate matters. Shareholders vote on such matters either in person at the annual shareholder meeting or by proxy. The proposals may be put forward by either the corporation (management proposals) or shareholders (shareholder proposals). The legal requirements are discussed in greater detail in the Baseline section, below.

The Department is concerned that in recent years, in response to activist investors, some corporations have prioritized integrating ESG policies into management issues, such as the qualifications of corporate boards, without due consideration of the relevance of specific ESG risks or their implications for the long-term financial performance of the corporation. For instance, Whelan (2024) conducted a survey of Fortune 100 companies which found that in

2023, 43 percent of board members had one or more relevant ESG credential, up from only 29 percent in 2018. The same survey found that the composition of boards changed significantly during this time frame.[99]

ESG has also grown to be more prevalent in executive compensation. In 2024, 77.4 percent of companies in the S&P 500 Index and 46.5 percent of companies in the Russell 3000 Index incorporated ESG metrics in their executive compensation, compared to 66.7 percent of companies in the S&P 500 Index and 39.9 percent of companies in the Russell 3000 Index in 2021. Of the S&P 500 companies using ESG metrics in director compensation in 2024, 90 percent used human capital management metrics (including Diversity, Equity, and Inclusion (DEI)), 59 percent used social metrics, and 53 percent used environmental metrics.[100] In 2025, ISS surveyed 159 investors and investor-affiliated organizations on whether incorporating nonfinancial ESG-related metrics into executive compensation is "an appropriate way to incentivize executives." 52 percent of respondents noted that compensation programs should use ESG metrics only "if the metrics selected are specific and measurable, and their associated targets are communicated to the market transparently" while four percent of respondents indicated that compensation programs should "only use traditional financial performance measures, for transparency and to maintain alignment with shareholders' financial interests."[101]

The changes in board composition and compensation were also encouraged by policies adopted by proxy advisory firms and investment managers. For instance, in the early 2020s, proxy advisory firms and several investment managers adopted proxy voting policies that encouraged climate disclosure, board diversity, and ESG oversight. These policies often included recommendations to vote against directors when companies failed to meet standards, such as

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[99] Tensie Whelan, *Boards Better Prepared in 2024 for Tackling Financial Material Sustainability Issues but Major Weaknesses Persist* (N.Y.U. Stern Ctr. for Sustainable Bus., Feb. 2024).
[100] The Conference Board, *ESG Performance Metrics in Executive Compensation Strategies: 2024 Edition* (Dec. 2024), https://www.conference-board.org/publications/ESG-performance-metrics-in-executive-compensation-strategies-2024-edition.
[101] ISS Governance, *2021 Global Benchmark Policy Survey: Summary of Results* (Oct. 2021), https://www.issgovernance.com/file/publications/2021-global-policy-survey-summary-of-results.pdf.

minimum gender diversity standards, enhanced climate risk reporting, and ESG oversight at the board level.[102] As the public discourse around ESG has changed, proxy advisory firms and some institutional investors have changed their proxy voting policies to soften their stance on issues such as board diversity.[103] Some shareholder proposals in 2026 even included language asking companies "to assess DEI programs in terms of net present value and/or whether they provide a positive return on investment" or "evaluate the risks to shareholder value, reputation, and legal compliance associated with incorporating ESG and DEI metrics into executive compensation plans."[104]

The rapid incorporation of ESG criteria into board qualifications and compensation metrics appears to have been driven by proxy advisory firms and investment managers promoting board diversity in response to reports suggesting a correlation between higher levels of diversity and financial outcomes. Many of these studies, however, utilized data from several countries with varying definitions of diversity.[105] Moreover, multiple meta studies found no statistically significant link between board diversity and corporate financial performance.[106]

More recently, the 2026 Economic Report of the President considered how DEI practices have affected productivity in the United States. The analysis used American Community Survey data on management composition, combined with industry-State-year measures of productivity,

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[102] Marc S. Gerber & Raquel Fox, *Investors Press for Progress on ESG Matters*, Harv. L. Sch. F. on Corp. Governance (Feb. 2022), https://corpgov.law.harvard.edu/2022/02/09/investors-press-for-progress-on-esg-matters/#:~:text=Beginning%20in%202023%2C%20it%20will,2020%2D21%20proxy%20voting%20year.d

[103] Beth Sasfai, Michael Mencher & Vince Flynn, *Board Diversity: Policy Updates and Considerations for Proxy Season*, Harv. L. Sch. F. on Corp. Governance (Mar. 6, 2025), https://corpgov.law.harvard.edu/2025/03/06/board-diversity-policy-updates-and-considerations-for-proxy-season/.

[104] Jennifer Zepralka, Ali Perry, and Liz Walsh, *ESG and Anti-ESG Proposals in 2026,* Harv. L. Sch. F. on Corp. Governance (Jun. 14, 2026), https://corpgov.law.harvard.edu/2026/06/14/esg-and-anti-esg-shareholder-proposals-in-2026/.

[105] See Vivian Hunt et al., *Diversity Wins: How Inclusion Matters*, McKinsey & Company (2020), https://www.mckinsey.com/~/media/mckinsey/ featured%20insights/diversity%20and %20inclusion/diversity%20wins%20how% 20inclusion%20matters/diversity-wins-how- inclusion-matters-vf.pdf; Rocio Lorenzo et al., *The Mix that Matters: Innovation through Diversity*, BCG (2017), https://www.bcg.com/ publications/2017/people-organization-leadership- talent-innovation-through-diversity-mix-that- matters; Deloitte, *Waiter, Is that Inclusion in My Soup? A New Recipe to Improve Business Performance*, (2013), https:// www2.deloitte.com/content/dam/Deloitte/au/ Documents/human-capital/deloitte-au-hc-diversity- inclusion-soup-051.

[106] 87 Fed. Reg. 73,822, 73,976 (Dec. 1, 2022).

to assess whether increases in the "unexplained" share of minority managers,[107] used as a proxy for DEI practices, were associated with changes in log output per hour. The study found no statistical relationship up to the mid-2010s but indicated that by 2023, industries that were proxied as heavily pursuing DEI initiatives, on average, experienced significantly lower levels of productivity after controlling for industry, year, and state fixed effects.[108]

The majority of proposals on proxy ballots are management proposals. For corporations in the S&P 1500 Index, there were 10,663 director elections, 1,278 say on pay proposals, and 433 shareholder proposals submitted for the 2025 proxy season as of June 30, 2025.[109] However, in recent years, there had been a noticeable increase in the number of shareholder proposals. As shown in Table 1 below, the number of shareholder proposals submitted to companies in the Russell 3000 Index peaked in 2024. The number of shareholder proposals increased by 34 percent between 2020 and 2024 and 16 percent between 2022 and 2024. In 2024, nearly 45 percent of shareholder proposals filed were on environmental or social issues.[110]

Table 1.—*Shareholder Proposals Filed on the Russell 3000 Index by Topic*

Year	Corporate Governance	Executive Compensation	Environmental	Social	Human Capital Management	Other	Total Filed
2020							697
2021							715
2022							801
2023	221	68	133	270	107	37	836
2024	259	76	149	265	130	53	932
2025	261	68	110	205	84	53	781

Note: The data reflects shareholder proposal submissions for stocks in the Russell 3000 Index between January and June of each year.

Source: The Conference Board, 2025 Proxy Season Review: From Escalation to Recalibration, (August 2025).

[107] The "unexplained" share was defined as the portion of Black, Hispanic and Native American manager representation not accounted for by industry-by-State, industry-by-year, and State-by-year fixed effects.

[108] *Economic Report of the President Transmitted to the Congress* (2026), https://www.govinfo.gov/content/pkg/ERP-2026/pdf/ERP-2026.pdf.

[109] Ernst & Young, *EY Center for Board Matters: Corporate Governance by the Numbers* (June 2025), https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/campaigns/board-matters/documents/ey-june-2025-cgbtn.pdf.

[110] The Conference Board, *2025 Proxy Season Review: From Escalation to Recalibration*, (August 2025).

In February 2025, SEC staff issued Staff Legal Bulletin No. 14M (CF) (SLB 14M). The SLB 14M clarifies, among other things, the SEC staff's view that omission of a proposal under the significant policy exception to the ordinary business exclusion of Exchange Act Rule 14a-8(i)(7) depends on the particular policy issue raised by the proposal and its significance in relation to the company.[111] Between 2024 and 2025, the number of shareholder proposals fell by 19 percent.[112]

Additionally, 2025 data also show an increase in omissions, with 23 percent of shareholder proposals omitted by companies in 2025, compared to 15 percent in 2024.[113] Table 2 below shows the proportion of shareholder proposals filed that passed, failed, were withdrawn by the proponent, or omitted by the corporation.

Table 2.—*Status of Shareholder Proposals Filed*

Year	Voted, Failed	Voted, Passed	Withdrawn	Omitted
2020	54%	9%	21%	17%
2021	48%	11%	23%	18%
2022	58%	9%	24%	9%
2023	65%	5%	20%	9%
2024	59%	5%	21%	15%
2025	52%	7%	18%	23%

Note: The data reflects shareholder proposal submissions for stocks in the Russell 3000 Index between January and June of each year.
Source: The Conference Board, 2025 Proxy Season Review: From Escalation to Recalibration, (August 2025).

Preliminary 2026 data published by ISS suggest that the decline in shareholder proposals and higher levels of omissions have continued. They report that between 2025 and 2026, the number of shareholder proposals submitted declined by 13 percent and the number of shareholder proposals pertaining to environmental, social, sustainability governance, or "anti-ESG" topics declined by 33 percent. In 2025 and 2026, 58 percent and 64 percent of shareholder

[111] SEC, *Shareholder Proposals: Staff Legal Bulletin No. 14M (CF)* (Feb. 2025), https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf.
[112] The Conference Board, *2025 Proxy Season Review: From Escalation to Recalibration*, (August 2025).
[113] The Conference Board, *2025 Proxy Season Review: From Escalation to Recalibration*, (August 2025).

proposals were voted on (i.e., not withdrawn or omitted), compared to 63 percent in 2024.[114] The continued trends in 2026 may be partially attributable to a statement from the SEC staff in November 2025 that they would only respond to or express views on no-action requests to exclude shareholder proposals pursuant to Exchange Act Rule 14a-8(i)(1).[115]

The regulatory landscape has continued to evolve as in August 2026, the SEC staff issued another statement that they would no longer respond to or express views on no-action requests to exclude shareholder proposals pursuant to Exchange Act Rule 14a-8(i)(1)[116] and on September 16, 2026, the SEC proposed a rule that, if finalized, would rescind the SEC's requirement that companies include qualifying shareholder proposals in their proxy materials.[117]

While shareholder proposals serve as signals of shareholder sentiment, shareholder proposals are generally advisory, except in limited cases where state law allows shareholders to amend company bylaws. Matsusaka and Shu (2024), in an analysis of mutual fund voting behavior, found the cost of researching the proposal may cost shareholders more than any potential benefit from the vote itself.[118]

Consistent with these concerns, questions about whether certain environmental and social proposals provide net economic benefits to shareholders may help explain decreasing shareholder support for such proposals in the U.S. For example, between 2023 and 2025 only two percent of the environmental and social shareholder proposals that were voted on passed.[119] Further, as noted in BlackRock's 2024 Investment Stewardship Annual Report, in 2024, 75.1

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[114] ISS Corporate, *Governance Proposals Dominate the 2026 Proxy Season* (July 2026).
[115] Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* (Nov. 2025), https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.
[116] Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, *Updated Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process* (Aug. 2026), https://www.sec.gov/newsroom/speeches-statements/corpfin-statement-rule-14a-8-process-081426.
[117] *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4*, 91 Fed. Reg. 59,904 (Sep. 21, 2026).
[118] John Matsusaka & Chong Shu, *Robo-Voting: Does Delegated Proxy Voting Pose a Challenge for Shareholder Democracy*, 47 Seattle U. L. Rev. (2024).
[119] The Conference Board, *2025 Proxy Season Review: From Escalation to Recalibration*, (August 2025).

percent of environmental and social-related proposals that went to a final vote received strong opposition[120] from shareholders in proxy vote contests. The report stated that "investors found many of these proposals to be overly prescriptive, lacking economic merit, or asking companies to address material risks they are already managing."[121]

In light of these trends, the Department is concerned that, when acting as ERISA fiduciaries, investment managers may be devoting significant resources to researching proxy proposals that are not economically relevant. Such actions do not promote the economic interests of participants and beneficiaries and subsequently violate their fiduciary obligations under ERISA.

2.2.2. Trends in Shareholder Engagement

While proxy voting is a highly visible method of exercising shareholder rights, investment managers may also engage with corporations in less public ways. For example, they might send letters or emails to corporations, call corporate management, or meet with corporate executives.[122] Gantchev and Gianetti (2021), opined that while investment managers do not typically propose many shareholder proposals, they are "presumably better able to negotiate with management without submitting proposals."[123]

In their analysis of the three largest index fund managers, Bebchuk and Hirst (2022) observed that large institutions have an outsized influence on a corporation's management. They found that in 2021, the three largest index fund managers, or "Big Three," held median stakes in S&P 500 companies ranging between 4.5 percent and 9.7 percent, collectively holding a median stake of 21.9 percent of S&P 500 companies. Further, the authors noted that, "the voting power

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[120] BlackRock considers a proposal to have strong opposition if it receives at least 75 percent market opposition.
[121] BlackRock, *Investment Stewardship Annual Report: Jan. 1–Dec. 31, 2024* (2024), archived at https://web.archive.org/web/20250929235951/https://www.blackrock.com/corporate/literature/publication/annual-stewardship-report-2024.pdf.
[122] Davidson Heath, Daniele Macciocchi & Matthew C. Ringgenberg, *The Economics of Investor Engagement*, Eur. Corp. Governance Inst., Finance Working Paper No. 1075/2025 (Dec. 2025).
[123] Nickolay Gantchev & Mariassunta Giannetti, *The Costs and Benefits of Shareholder Democracy*, 34 Rev. Fin. Stud. 5629, 5636 (2021).

of the Big Three is actually substantially greater than the number of shares that they hold […] because the Big Three consistently vote the shares they hold, whereas a substantial proportion of other investors do not vote their shares." Collectively, the Big Three accounted for a median of 27.6 percent of votes cast at annual meetings of S&P 500 companies.[124]

The significant voting influence documented by Bebchuk and Hirst (2022) helps explain why corporate governance experts such as Sonsini and Schnell (2025) stress the necessity of engaging with large investment managers. In describing best practices for shareholder engagement, Sonsini and Schnell (2025) wrote:

> [T]he rise of index investing has resulted in a concentration of voting power in the hands of a relatively small number of institutional investors. Companies ignore index investors at their peril, and regular efforts should be made to engage with the governance teams at these investors.[125]

While the Department is unaware of a comprehensive source on shareholder engagement activity, some investment managers publish reports that discuss their stewardship activities. For instance, in 2024, BlackRock, Inc. engaged 2,394 companies, directly engaging a company's board or management 3,384 times. Of these engagements, 33 percent included discussions related to climate and natural capital and 35 percent contained discussions on company impacts on people.[126] The number of engagements has increased drastically in recent years. BlackRock engaged company boards just 1,480 times in 2016 and 1,273 times in 2017.[127] In comparison, between 2020 and 2024, BlackRock engaged company boards on average over 3,500 times.[128] Further, within this timeframe there was a change in tone, with a growing focus on more environmental and social issues.

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[124] Lucian A. Bebchuk & Scott Hirst, *Big Three Power and Why It Matters*, 1547 102 B.U. L. Rev. (2022).
[125] Larry Sonsini & Doug Schnell, *Navigating Shareholder Engagement and Shareholder Activism: Essentials and Best Practices*, Harv. L. Sch. F. Corp. Governance (Nov. 2025), https://corpgov.law.harvard.edu/2025/11/18/navigating-shareholder-engagement-and-shareholder-activism-essentials-and-best-practices/.
[126] BlackRock, Inc., *BlackRock Investment Stewardship: 2024 Annual Report* (2024).
[127] BlackRock, Inc., *BlackRock Investment Stewardship: 2018 Annual Report* (2018).
[128] BlackRock, Inc., *BlackRock Investment Stewardship: 2024 Annual Report* (2024); BlackRock, Inc., *BlackRock Investment Stewardship: 2023 Annual Report* (2023); BlackRock, Inc., *BlackRock Investment Stewardship: 2022 Annual Report* (2022); BlackRock, Inc., *BlackRock Investment Stewardship: 2021 Annual Report* (2021); BlackRock, Inc., *BlackRock Investment Stewardship: 2020 Annual Report* (2020).

For further context, between June 2024 and June 2025, Fidelity Investments reported having approximately 18,000 meetings with approximately 6,300 corporations. While Fidelity does not provide a clear breakdown of engagement by type or by topic, they note that roughly 400 of the meetings were stewardship-focused engagements where "members of the Fidelity team engaged in two-way dialogues and the primary focus was on topics related to financially material sustainability factors or proxy items."[129] Russell Investments had 320 direct engagements in 2024, of which 41 percent were focused on environmental issues and 16 percent were focused on social issues.[130] While this provides insight into the shareholder engagement of some investment managers, most investment managers do not report information on engagements. The Department has little information on the activities undertaken by smaller investment managers.

Shareholder engagement is resource intensive for both investment managers and corporations; however, stakeholders have mixed opinions on the effectiveness of engagement. Each year, PricewaterhouseCoopers (PwC) conducts a series of surveys of institutional investors and corporate directors, which provide insight into the prevalence and effectiveness of shareholder engagement. For example, PwC's 2025 Global Investor Survey found that 46 percent of institutional investors regularly engage with companies they invest in or cover and another 43 percent engage when there's a specific issue or interest. When asked about whether they expect their stewardship activities to have an impact on investment performance, few institutional investors (16 percent) noted that there is no relationship between their stewardship and investment teams, whereas 72 percent expected stewardship to impact investment performance over the next three to four years.[131]

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[129] Fidelity Investments, *Sustainable Investing and Stewardship Update: 2024-2025,* https://institutional.fidelity.com/app/literature/view?itemCode=9921658&renditionType=PDF.
[130] Russell Investments, *Investment Stewardship Report 2024* (2024), https://russellinvestments.com/content/dam/ri/files/us/en/common/corporate/investment-stewardship-report.pdf.
[131] PricewaterhouseCoopers, *Global Investor Survey 2025: Investors Look for Resilience and Innovation in 2026* (Dec. 2025), https://www.pwc.com/gx/en/issues/c-suite-insights/global-investor-survey.html (surveying 1,074

However, the 2024 Stewardship Investor survey found that only 38 percent of asset stewardship professionals reported satisfaction with management's ability to articulate how sustainability initiatives relate to long-term growth. Roughly 23 percent expressed dissatisfaction with the quality of board-level engagement discussions for all types of engagement.[132] Further, in PwC's Annual Corporate Directors Survey, 57 percent of directors noted that a member of the board (other than the CEO) had direct engagement with investors during the last 12 months, of which 31 percent noted that they did not take any specific steps as a result of the engagement.[133] Taken together, these surveys suggest that while shareholder engagement is widespread and resource intensive, its effectiveness may be limited, as many interactions do not result in concrete corporate actions, and investors remain dissatisfied with the quality of strategic and sustainability-related discussions.

When investment managers engage with company management in a manner that is not consistent with promoting the economic interests of plan participants and beneficiaries, both investment managers and publicly traded corporations with whom they engage may allocate resources to shareholder activities that are not likely to enhance the company's profitability or shareholder value. Such engagement may divert resources from activities more likely to improve investment returns or corporate performance and may impose costs without corresponding financial benefits to shareholders.

2.2.3. The Role of Proxy Advisory Firms

Growth in the number of shareholder proposals has encouraged reliance on proxy advisory firms. Proxy advisory firms offer voting recommendations as well as research on how

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institutional investors, including investment firms, banks, private equity and venture capital groups, hedge funds, pension funds, sovereign wealth funds, and other financial institutions across more than 26 countries and territories).

[132] PricewaterhouseCoopers, *2024 Stewardship Investor Survey: Maximizing Engagement: What Investors Want* (Sept. 2024), https://www.pwc.com/us/en/services/governance-insights-center/library/inaugural-stewardship-investor-survey.html.

[133] PricewaterhouseCoopers, *2025 Annual Corporate Directors Survey: Driving a Culture of Accountability in the Boardroom,* (Oct. 2025), https://www.pwc.com/us/en/services/governance-insights-center/library/assets/pwc-2025-annual-corporate-directors-survey.pdf (surveying 638 corporate directors).

proposals on the proxy ballot may affect the company, its risk profile, and its financial future. As discussed by Shu (2024) and Matsusaka and Shu (2024), proxy advisory firms offer economies of scale, allowing shareholders to receive information on proxy proposals at a lower cost.[134]

The Department's 2022 regulation encouraged the reliance on "efficient structures," such as proxy advisory firms, to prudently manage expenses associated with proxy voting.[135] However, the Department received comments expressing concern over the role and influence of proxy advisory firms in response to both its 2020 and 2022 rules. Today, their influence continues to be a matter of concern, as demonstrated by the House Committee on Financial Service's hearing on the matter held in April 2025.[136] The Department is concerned that past regulatory guidance has encouraged plans and their fiduciaries to over-rely on proxy advisory services.

The Department requests comments on how often plans or 3(38) investment fiduciaries engage with proxy advisory firms, including how often and for what type of services. The Department would also appreciate comments on the costs associated with these engagements.

2.3. Conclusion

The proposed rule clarifies for fiduciaries and service providers how to consider nonfinancial factors in investment decision making and when exercising shareholder rights. As discussed throughout this analysis, uncertainty around this issue may have contributed to investment choices and shareholder activities that were not undertaken to advance the economic interests of plan participants and beneficiaries. This proposed rule would clarify fiduciaries' duty of loyalty by reaffirming that investment decisions must be based on risk and return factors and

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[134] Chong Shu, *The Proxy Advisory Industry: Influencing and Being Influenced*, 154 J. Fin. Econ. 103810 (Apr. 2024); John Matsusaka & Chong Shu, *Robo-Voting: Does Delegated Proxy Voting Pose a Challenge for Shareholder Democracy*, 47 Seattle U. L. Rev. 605 (2024).
[135] *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights,* 87 Fed. Reg. 73,822 (Dec. 1, 2022).
[136] U.S. House Comm. on Fin. Servs., *Hearing Entitled: Exposing the Proxy Advisory Cartel—How ISS & Glass Lewis Influence Markets* (Apr. 2025), https://www.congress.gov/event/119th-congress/house-event/LC74986/text.

that shareholder rights for plan assets should be exercised only when doing so is in the economic interest of participants and beneficiaries.

3. Baseline

The baseline for this Regulatory Impact Analysis (RIA) is current law, comprised by 29 CFR § 2550.404a-1 and relevant regulatory actions taken by the SEC and statements made by SEC staff. Each is discussed in greater detail below.

3.1. Investment Duties Under ERISA

29 CFR § 2550.404a-1 requires plan fiduciaries to discharge their investment duties in accordance with the prudence and loyalty standards.[137] This proposed rule largely focuses on the loyalty provisions, which prohibit fiduciaries from subordinating participants' and beneficiaries' financial interests to nonfinancial objectives or sacrificing returns to promote unrelated goals. The Department finalized amendments to the 29 CFR § 2550.404a-1 in December 2022, which serves as the baseline for this proposed rule.

Under the 2022 rule, a tiebreaker standard under paragraph (c)(2) allowed fiduciaries to consider collateral interests when competing investments "equally serve the financial interests of the plan." This proposed rule would remove the tiebreaker provision. It would also replace a prohibition against subordination with a requirement that fiduciaries act with the "exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan." This proposed rule further removes paragraph (c)(3), which addresses consideration of participants' nonfinancial preferences when selecting plan investments and deletes the statement from paragraph (b)(4) that "risk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action." Finally, the proposed rule amends paragraph (d), adding explicit references to "shareholder engagement,"

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[137] *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 87 Fed. Reg. 73,822 (Dec. 1, 2022).

"all other rights accompanying share ownership," and "any other related investment courses of action."

Since 2016, an increasing share of plans have included ESG-related investments in their lineups, leading to an increase in the share of participants that have access to these investments. The Department expects that, absent this proposed rulemaking, plans would continue to utilize ESG-related investments at their current rate and some plan fiduciaries would continue to fail to consider critically the effect of shareholder activities on the economic interests of plan beneficiaries and participants. Under the proposed rule, the Department expects that plans would offer fewer ESG-related investments, restricting them to those funds that are selected based solely on considerations of risk and return. Likewise, the Department expects that entities to which plans delegate shareholder rights would spend fewer resources as they instead limit their activities to those that are in the economic interests of employee benefit plans.

3.2. Relevant Requirements Under the Federal Securities Laws

Below is a summary of regulatory actions taken by the SEC and statements made by SEC staff that the Department has considered in its baseline.

3.2.1. Proxy Voting

Certain entities are legally mandated to allow shareholders or beneficial owners to vote on certain topics. For example, the Investment Company Act of 1940 requires that directors or trustees of registered investment companies be elected by shareholders or beneficial owners.[138] Additionally, the SEC's Rule 14a-21 requires companies to get advisory shareholder input on executive compensation ("say on pay"),[139] the frequency of votes for approval of executive compensation, and on golden parachute compensation.[140,141] In addition to votes required under

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[138] 15 U.S.C. § 80a-16(a) (2024).
[139] Companies must have an advisory vote on the compensation of the most highly compensated executives once every three years.
[140] Golden parachutes are compensation arrangements in which senior executives receive large severance payments in the case of an event such as a merger or acquisition.
[141] 17 C.F.R. § 240.14a-21 (2024).

Federal securities laws, corporations may submit other matters to shareholders voluntarily or as required under applicable state law, such as amendments to the articles of incorporation, auditor appointment ratification, authorization to issue new types of securities, and mergers and acquisitions. While the election of the board of directors is generally considered binding, the other proposals from the company are generally considered advisory (i.e., not binding).

In addition, the SEC's Regulation 14A governs the solicitation of proxies for securities registered under Section 12 of the Securities Exchange Act of 1934.[142] Rule 14a-8 states that a company must include a proposal submitted by an eligible shareholder[143] in its proxy statement if the shareholder follows certain procedures, though the SEC rule allows companies to exclude shareholder proposals under certain circumstances. For instance, Rule 14a-8(i)(5) states that a company may exclude a proposal if it "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and it is not otherwise significantly related to the company's business."[144] If a company intends to exclude a proposal from its proxy materials for any reason, the company must file its reasons for excluding the shareholder proposal with the SEC and provide the proponent a copy of the company's submission to the SEC.

Rule 14a-8(i)(7) stipulates that a company may exclude a shareholder proposal that relates to a company's ordinary business operations. In November of 2021, SEC staff issued Staff Legal Bulletin No. 14L (CF) (SLB 14L), which noted that when determining whether a proposal falls under the ordinary business exception, SEC staff would "consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary

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[142] 17 C.F.R. § 240.14a-1 – 240.14b-2 (2024).
[143] A shareholder is eligible to submit a proposal if they have continuously held: (1) at least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; (2) at least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or (3) at least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year. 17 C.F.R. § 240.14a-8 (2024) (titled "Shareholder Proposals").
[144] 17 C.F.R. § 240.14a-8 (2024).

businesses of the company," regardless of whether there was a "nexus between a policy issue and the company."[145]

In February 2025, SEC staff issued SLB 14M, which rescinded SLB 14L. SLB 14M also addressed the Rule 14a-8(i)(7) ordinary business exclusion stating "the staff will take a company-specific approach in evaluating significance, rather than focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues or categories of issues are universally "significant." The Division's analysis will focus on whether the proposal deals with a matter relating to an individual company's ordinary business operations."[146]

In addition, in November 2025 SEC staff issued a statement that due to resource constraints, the staff would "not respond to no-action requests for, and express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1)."[147] The SEC was sued over this statement; the case was voluntarily dismissed.[148]

This regulatory space is continuing to involve. In August 2026, the SEC staff issued a second statement that they would no longer respond to or express views on no-action requests to exclude shareholder proposals pursuant to Exchange Act Rule 14a-8(i)(1).[149] In addition, on September 16, 2026, the SEC published a proposed rule titled Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4.[150] If finalized, this rule

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[145] SEC, *Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)* (Nov. 2021), https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14l-cf.
[146] SEC, *Shareholder Proposals: Staff Legal Bulletin No. 14M (CF)* (Feb. 2025), https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf.
[147] Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* (Feb. 12, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.
[148] *See* Complaint, *Interfaith Ctr. on Corp. Responsibility v. SEC*, No. 1:26-cv-00957 (D.D.C. filed 2026).
[149] Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, *Updated Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process* (Aug. 2026), https://www.sec.gov/newsroom/speeches-statements/corpfin-statement-rule-14a-8-process-081426.
[150] *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4*, 91 Fed. Reg. 59,904 (Sep. 21, 2026).

would rescind the federal requirement that companies include qualifying shareholder proposals in their proxy materials.

3.2.2. Proxy Voting Responsibilities

In 2003, the SEC adopted a new rule under the Investment Advisers Act of 1940 ("Advisers Act") to require an investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of its clients, among other requirements.[151] This rule was motivated in part by concerns regarding potential material conflicts of interest that may affect the manner in which an adviser votes clients' proxies – including business or personal relationships with participants in proxy contests, corporate directors or candidates for directorships.

Under the final rule, an investment adviser that exercises voting authority over client proxies must adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, disclose to clients information about those policies and procedures, and disclose to clients how they may obtain information on how the adviser has voted their proxies. The rule applies to both advisers that have implicit as well as explicit voting authority, including when the advisory contract is silent but the adviser's voting authority is implied by an overall delegation of discretionary authority. The rule does not apply, however, to advisers that provide clients with advice about voting proxies but do not have authority to vote the proxies.

3.2.3. Proxy Voting Advisors

In July of 2020, the SEC adopted the final rules "Exemptions from the Proxy Rules for Proxy Voting Advice" concerning proxy voting advice provided by proxy advisory firms, or proxy voting advice businesses ("PVABs").[152] The 2020 rule amended Rule 14a-1(l) to codify

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[151] *Proxy Voting by Investment Advisers*, 68 Fed. Reg. 6,585, 6,593 (Feb. 7, 2003).
[152] *Exemptions from the Proxy Rules for Proxy Voting Advice*, 85 Fed. Reg. 55,082 (Sept. 3, 2020).

the SEC's longstanding view that proxy voting advice generally constitutes a "solicitation" under Section 14(a) of the Securities Exchange Act of 1934. It also:

(1) Adopted Rule 14a-2(b)(9) to add new conditions to two exemptions, that PVABs generally rely on, from proxy rules' information and filing requirements, including new conflicts of interest disclosure requirements and requirements to adopt and publicly disclose certain written policies and procedures; and

(2) Adopted Note (e) to Rule 14a-9, which prohibits false or misleading statements in connection with proxy solicitations, to include examples of omissions in connection with proxy voting advice that may be considered misleading under Rule 14a-9.

The 2020 amendments to Rules 14a-1(l) and 14a-9 became effective in November 2020, while PVABs were not required to comply with the new conditions in Rule 14a-2(b)(9) until December 2021. However, the SEC reassessed these actions with its 2022 rulemaking.[153] While the SEC maintained that proxy voting advice generally constitutes a "solicitation," it made amendments to Rules 14a-2(b)(9)[154] and 14a-9[155] to:

> avoid burdens on PVABs that may impede and impair the timeliness and independence of their proxy voting advice and avoid misperceptions regarding the application of Rule 14a-9 liability to proxy voting advice, while also preserving investors' confidence in the integrity of such advice.[156]

In July of 2025, the U.S. Court of Appeals for the D.C. Circuit affirmed a ruling that the 2020 rulemaking was invalid, stating that:

> [T]he best reading of section 14(a), grounded in the ordinary meaning of "solicit" in its statutory context, is that the term refers to a request for proxy authority or a directed plea to exercise such authority in a particular manner. Proxy-voting advice rendered by a third party for a fee falls outside that definition. It is simply a recommendation. The SEC's

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[153] *Proxy Voting Advice*, 87 Fed. Reg. 43,168 (July 19, 2022).
[154] The SEC amended Rule 14a-2(b)(9) to remove paragraphs (ii) through (vi), which required PVABs to adopt and publicly disclose written policies and procedures to rely on exemptions in Rules 14a-2(b)(1) and (b)(3). In its preamble, the SEC stated that they reassessed the rule in response to concerns over how these provisions would impact the independence of PVABs, the timeliness of proxy voting advice, and PVAB compliance costs. The SEC did not, however, rescind the conflicts of interest disclosure requirement in Rule 14a-2(b)(9)(i).
[155] The SEC also amended Rule 14a-9 to remove Note (e). The SEC remarked that the note, rather than providing clarification as intended, had increased litigation risk.
[156] *Proxy Voting Advice*, 87 Fed. Reg. 43,168 (July 19, 2022) (citations omitted).

effort to expand "solicitation" to include such advice cannot be reconciled with the statutory text and its adoption of that definition in the 2020 Rule was contrary to law.[157]

This judgment effectively ended the SEC's existing efforts to regulate proxy voting advisors under section 14(a).

4. Summary of Impacts

Table 3.—*Accounting Statement*

Benefits:

	Estimate (Primary)	Year Dollar	Discount Rate	Period Covered
Annualized Monetized ($ Millions / Year)	$25.78	2026	7 percent	2026-2035
	$26.73	2026	3 percent	2026-2035

Quantified:
The estimated 10-year present value of benefits, discounted at 7 percent, is $181.09 million. The proposed rule would ensure that fiduciaries select investments based only on risk and return considerations. This would shift some plan assets from being invested in ESG-related funds in the baseline to being invested in other funds under the proposal. In terms of increased investment returns, the Department estimates that this would lead to benefits of approximately $15.20 million in the first year and about $274.78 million in undiscounted additional returns over ten years.

Non-Quantified:
By clarifying that plan fiduciaries must ensure that entities selected to exercise, advise on, or assist with shareholder rights exercise shareholder rights only when doing so is in the economic interest of participants and beneficiaries, the Department expects that the proposed rule would reduce resources devoted to proxy votes and shareholder engagements that lack economic justification. This would result in cost savings, which are discussed and quantified below.

Costs:

	Estimate (Primary)	Year Dollar	Discount Rate	Period Covered
Annualized Monetized Costs ($ Millions / Year)	-$1,067.73	2026	7 percent	2026-2035
	-$1,074.68	2026	3 percent	2026-2035

[157] Inst. S'holder Servs., Inc. v. SEC, 142 F.4th 757, 768 (D.C. Cir. 2025).

The estimated 10-year present value of net costs, discounted at 7 percent, is -$7,499.31 million.

Quantified Costs:
The estimated 10-year present value of costs, discounted at 7 percent, is $337.55 million. The Department expects that entities would incur the following costs due to the proposed rule:

- Costs to plans and service providers related to reviewing the rulemaking and developing compliance plans total $124.27 million in the first year.
- Costs to plans related to reviewing and revising investment policy statements and making changes to investments or menus, totaling $164.65 million in the first year.
- Costs to plans related to reviewing and updating policies related to shareholder rights, totaling $66.73 million in the first year.
- Cost to managers of funds with plan assets related to reviewing and revising fund investment policies, totaling $2.76 million in the first year.
- Cost to fund managers related to reviewing and revising policies related to the exercise of shareholder rights, totaling $2.76 million in the first year.

Quantified Cost Savings:
The estimated 10-year present value of cost savings, discounted at 7 percent, is $7,836.86 million. The Department expects that entities would experience the following cost savings due to the proposed rule:

- Eliminating the use of nonfinancial ESG factors when selecting and monitoring investments would reduce the need for ESG-related research, resulting in lower fees. This would generate cost savings for plans and participants, estimated to be $2.85 million annually.
- Cost savings related to a reduction in resources devoted to proxy voting, estimated to be $618.33 million annually.
- Cost savings related to a reduction in resources devoted to both plan asset and non-plan asset shareholder engagement, estimated to be $254.01 million annually for investment managers and $240.60 million for publicly traded corporations.

Transfers:

Non-Quantified:
The Department expects that the proposed rule will lead to the following transfers:

- As plans move assets from ESG-related funds selected using nonfinancial factors toward other funds, financial institutions sponsoring ESG-related products and ESG ratings agencies would lose revenue while providers of other investments would gain revenue.
- There would be a transfer from sectors of the economy favored by ESG investors to other sectors.

Perpetual Time Horizon Costs:
Annualized Cost (in 2024 dollars) (Executive Order 14192 accounting): -$1,057.46 million

5. Requests for Comment

In addition to the requests throughout the document for specific assumptions or other items, the Department would appreciate comments on its characterization of the benefits, costs, and cost savings that may result from the proposed amendments. In particular, the Department would appreciate comments on the following items:

(1) The extent to which plans currently use nonfinancial factors in selecting investments, and how the proposed rule would change plan investments.

(2) The extent to which plans rely on the tiebreaker provision, and the implications of removing it.

(3) How plans using the tiebreaker provision determine that they have a tie, and whether in some instances the evidentiary basis for a tie is weak.

(4) The nature of any changes in litigation risk that plans would experience as a result of removing the tiebreaker provision, and information that would be useful for quantifying these effects.

(5) How the proposed rule would affect plan fees and why.

(6) Evidence on how removing the participant preferences provision would affect participation in and contributions to ERISA defined contribution plans.

(7) How the proposed rule's provisions related to proxy voting and shareholder engagement would affect the resources that investment managers and publicly traded corporations expend, both associated with ERISA-covered pension plans and more broadly.

(8) Whether the proposed rule would affect the number of shareholder proposals filed.

(9) Evidence, especially data, on how many and what type of shareholder engagements investment managers typically pursue in a year, as well as what types of shareholder engagements would be most affected by the proposed rule.

(10) How resources directed from shareholder activities without an economic basis might affect shareholder or firm value, and how this might translate to benefits for plan participants and beneficiaries.

(11) How often plan fiduciaries or investment managers engage a proxy advisory firm, including how often they are used, what type of services they are used for, and the costs associated with these engagements.

(12) How proxy advisory firms will respond and adjust their business plans in response to the proposed rule.

(13) Whether the reductions in resources that investment managers and publicly traded corporations are expected to devote to proxy voting and shareholder engagement, discussed in Section 8.3, should be characterized as benefits of the proposed rule rather than as cost savings, consistent with the treatment of similar effects in some parts of the Department's 2020 rulemaking on proxy voting and shareholder rights.

(14) The effect, if any, that the SEC's proposed rescission of Rule 14a-8 (Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4) would have on the volume of shareholder proposals submitted to, and voted on by, ERISA plan fiduciaries or their investment managers, and how any resulting change in proposal volume should be accounted for in estimating the cost savings associated with this proposed rule. The Department is particularly interested in data or analysis regarding the treatment of shareholder proposals under the corporate law of Delaware and other states with a significant concentration of publicly traded company incorporations, and the extent to which state law would independently require or permit the inclusion of shareholder proposals in proxy materials absent Rule 14a-8.

6. Affected Entities

To estimate the number of affected entities the Department identified the types of entities that would be impacted by the proposed rule. This universe includes ERISA-covered plans, plan administrators, investment managers managing plan assets, and proxy advisory firms. The Department then sought to understand how each element of the proposed rule affects this population and established assumptions to estimate the number of affected entities. Table 4 displays the estimates of how many entities would be affected by the proposal. The following sections detail the development of the estimates of the affected entities.

Table 4.—*Affected Entities*

Entity	Affected Entities
Retirement Plans	837,000
Plan Participants	6,146,000
Service Providers [a]	6,950

[a] Includes plan administrators, investment managers, and proxy advisory firms.

6.1. Estimate of Population Affected

ERISA-covered plans and participants would be affected by the proposed rule. The Department estimates that this includes 837,000 pension plans since all pension plans are assumed to review the proposed rule to ensure compliance.[158]

The Department excluded welfare plans from its estimates because very few welfare plans hold investments that would lead to them being meaningfully impacted.[159] The Department based this decision on an analysis of Schedule H filings of large welfare plans, which found that only 1.5 percent of these plans held a meaningful level of assets that may carry shareholder rights. The Department believes that small welfare plans, which both constitute the vast majority of welfare plans and are either not required to file with the same level of detail as their large counterparts or not required to file at all, will have an even lower rate of assets that would trigger shareholder rights.[160] The Department requests comments on these assumptions.

The Department recognizes that most plans engage outside service providers to aid in the administration of the plan. When engaged, these service providers provide support for many

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[158] U.S. Dep't of Labor, Employee Benefits Sec. Admin., *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 Annual Reports* tbl.A1 (Jan. 2026), *https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan.*

[159] EBSA tabulations of welfare plans using the 2023 Form 5500 filings with the US Department of Labor. The Department examined the sum of all asset classes from the Schedule H of the Form 5500 filings for all welfare filings where the plan reported at least 100 participants. To exclude balances that are merely transactional, the Department further restricted this group to plans that reported at least $10,000 in combined total of these assets.

[160] Generally, private-sector employer health and welfare plans are only required to file a Form 5500 if they have 100 or more participants. Regardless of size, plans must file a Form 5500 if they hold assets in trust or are identified as a Multiple Employer Welfare Arrangement (MEWA) or certain Entities Claiming Exception (ECE). Most small (typically fewer than 100 participants), ERISA-covered welfare plans do not hold assets in trust and, therefore, are not required to file a Form 5500. As such, the number of welfare plans that file with the Department is believed to be less than 5 percent of the total ERISA welfare plan universe.

actions, including those associated with the plan's response to this proposed rulemaking. Based on survey data from a series of Plan Sponsor Council of America (PSCA) surveys spanning their 2021-2025 reports, the Department estimated that approximately 85 percent of plans engage an investment manager or investment advisory firm to assist with plan assets.[161] The Department estimates the number of relevant service providers for this analysis to be approximately 6,950 entities.[162] This includes about 1,000 entities responsible for investment decision-making for pooled investment vehicles held by 401(k) plans.[163]

6.1.1. Plans, Participants, and Assets Affected by Investment Modifications

The proposal would require plans whose investment policy statements allow them to incorporate nonfinancial factors to revise their policies and update plan documents. The Department considered statistics from several surveys related to retirement market interest in ESG investing principles, which are outlined below, and established an assumption that 30 percent of plans would review and revise their investment policy statement.

Callan's 2025 Defined Contribution Trends Survey found that 18 percent of plan sponsors surveyed were currently offering at least one ESG fund. Another 7 percent indicated that they would consider adding one in the future, suggesting a total of 25 percent of plan sponsors surveyed either had or were considering adding ESG to their portfolio.[164] In their 2024 ESG Survey, Callan found that 31 percent of the corporate respondents indicated incorporating ESG factors into investment decisions for their plans. This survey found that 92 percent of these respondents incorporated ESG into the investment decision making process by updating their

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[161] Plan Sponsor Council of America, *64th Annual Survey of Profit Sharing and 401(k) Plans* (2021); id., *65th Annual Survey of Profit Sharing and 401(k) Plans* (2022); id., *66th Annual Survey of Profit Sharing and 401(k) Plans* (2023); id., *67th Annual Survey of Profit Sharing and 401(k) Plans* (2024); & id., *68th Annual Survey of Profit Sharing and 401(k) Plans* (2025).

[162] The Department examined Form 5500 Schedule C filings by large retirement plans and counted the unique service providers they reported with codes 14, 27, and 28 (which are plan administrators, investment advisors to plans, and investment managers, respectively). The Department adjusted for filing patterns and data trends in the Form 5500. The estimate also includes proxy advisory firms; the impacts on them are discussed in Section 6.3.

[163] See Section 6.2 for additional information.

[164]Callan LLC, *2025 Defined Contribution Trends Survey* 6, 22 (2025) (Respondents included corporate, public, and tax-exempt plan sponsors).

investment policy statement, supporting the Department's assumption that plans using ESG will need to review and update their investment policy statement.[165]

Next, we consider the proportion of retirement plans that will likely need to revise their menu or investments, which the Department estimates at approximately 15 percent of retirement plans. The Department developed this estimate using several surveys and administrative data sources, which are detailed below.

In the DC plan space, a survey conducted by the PSCA found that about 6 percent of the 401(k) plans surveyed had at least one investment with ESG-related investment strategies on their lineup in 2024.[166] Using administrative data from 2023 Form 5500 filings by DC plans with at least 100 participants, the Department found that approximately 12 percent of plans had at least one ESG-related fund on their menu.[167] Vanguard's administrative data shows that 17 percent of DC plans are "offering socially responsible funds."[168] Similarly, about 18 percent of the plan sponsors responding to Callan's DC Trends survey said their plans have at least one investment with ESG-related investment strategies in their lineup.[169] The population surveyed by Callan tend to be very large and includes government and tax-exempt entities, which may account for its findings being relatively high.

The Department is aware of only one source indicating the prevalence of ESG investing among defined benefit (DB) plans. A 2023 survey conducted by Mercer reports that 28 percent of DB plan sponsors use ESG data to assist with investment manager selection.[170] Given the limited data available for DB plans, and the fact that DB plans are only about six percent of

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[165] Callan LLC, *2024 ESG Survey* 3 (2024) (Corporate respondents sponsored DB, DC, and other plans).
[166] Plan Sponsor Council of Am., *68th Annual Survey of Profit-Sharing and 401(k) Plans: The Source for 401(k) Plan Benchmarking Data*tbl.81 (2025).
[167] The Department used Morningstar Direct data to identify mutual funds and collective investment trusts that included a mandate to hold securities from issuers with various kinds of ESG characteristics. The Department tabulated how many plans with audited filings in the BrightScope dataset held these investments.
[168] Vanguard, *How America Saves 2025* fig. 75 (2025).
[169] Callan LLC, *2025 Defined Contribution Trends Survey* (2025).
[170] Mercer, *Findings from Mercer's Shaping the Future Survey of DB Plan Sponsors* (2023), https://www.mercer.com/assets/ca/en_ca/shared-assets/local/attachments/pdf-2023-the-time-is-now-infographic.pdf.

ERISA retirement plans, the Department did not develop separate assumptions for different retirement plans. Rather, the Department assumes that 15 percent of all retirement plans would modify their investments or their menu under the proposed rulemaking.

It is possible that this assumption underestimates the share of plans impacted because it only represents ESG investing and does not reflect investing using other types of nonfinancial factors, which would also be affected by the proposal. However, the assumption may be overstated to the degree that some plans report having ESG-related investments and would keep those investments under the proposed rule because their selection can be justified based solely on financial performance factors.

The Department estimates that 6,146,000 participants would be affected by the investment modifications resulting from the proposal. It obtained this estimate by reviewing the impact on specific types of plans. DC plans have 95,939,000 participants with account balances.[171] About 94 percent of those participants are in plans that are partially or fully participant-directed. [172] As described above, the Department estimates that 15 percent of plans would change the investments on their menu. The Department assumes that 7 percent of the participants in those plans are actually invested in the ESG-related fund options on their plan's lineup, based on Vanguard administrative data showing that when DC plan participants are offered ESG fund options, about 7 percent invest in them.[173] Therefore, the Department estimates in participant-directed DC plans there are 952,000 participants who would be affected by the

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[171] U.S. Dep't of Labor, EBSA, *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 Annual Reports* tbl.A2 (Jan. 2026), *https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan* (The Department focuses on participants with an account balance as the DC participants that would be affected by investment changes because for individual account plans, total participant and active participant figures include employees who are eligible for a plan even if no contributions have ever been made into an account on their behalf.).

[172] U.S. Dep't of Labor, Employee Benefit Sec. Admin., *Private Pension Plan Bulletin Abstract of 2023 Form 5500 Annual Reports* tbl.D5 (Jan 2026), *https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan.* The Department assumes that the share of DC participants with account balances who are in participant-directed plans is the same as the share of DC active participants who are in participant-directed plans. There are 88,239,000 active participants in fully participant-directed DC plans, 2,824,000 active participants in partially participant-directed DC plans, and 96,369,000 active participants in all DC plans. ((88,239,000 + 2,824,000) / 96,369,000 = 0.9449408).

[173] Vanguard, *How America Saves 2026* tbl.72 (2026) (This figure is the share of DC participants who take up "socially responsible" funds conditional on being offered them).

proposal.[174] For non-participant directed DC plans and DB plans, the calculation is similar, except that the Department considers all participants to be affected if the plan modifies its investments. The Department estimates that non-participant-directed DC plans have 792,000 participants who would be affected.[175] Similarly, DB plans have 4,402,000 participants who would be affected.[176] In total across all plans, the Department estimates that the proposed rule would affect approximately 6,146,000 participants.[177] This estimate includes double-counting in situations where an individual participates in multiple plans that have investments that would be affected by the proposed rule.

The share of 401(k) plan assets allocated to ESG-related investments appears to be very low. While 15 percent of plans may have at least one ESG-related offering on their menu, generally within those plans, only a small share of assets is allocated to ESG-related funds. Furthermore, many of the retail investors who are interested in pursuing ESG investing are young and have small account balances.[178] The Department tabulates that about 0.2 percent of 401(k) plan assets were held in ESG-related funds in 2023.[179]

The Department is uncertain what share of the assets currently in ESG-related funds under the baseline would remain in those funds, because their selection was based entirely on considerations of risk and return, and what share would need to be allocated to other funds instead under the proposed rule. For purposes of estimating certain benefits in Section 7.2 and certain cost savings in Section 8.2, the Department assumes that half the assets, or 0.1 percent, would be allocated differently under the proposed rule in comparison to the baseline. The Department requests comments on these assumptions.

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[174] (95,939,000 x 0.9449408 x 0.15 x 0.07 = 951,895)
[175] (95,939,000 x (1 - 0.9449408) x 0.15 = 792,349)
[176] U.S. Dep't of Labor, Employee Benefit Sec. Admin., *Private Pension Plan Bulletin Abstract of 2023 Form 5500 Annual Reports* tbl.D5 (Jan 2026), *https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan* ((29,347,000 x 0.15 = 4,402,050) DB plans have 29,347,000 total participants).
[177] (951,895 + 792,349 + 4,402,050 = 6,146,294)
[178] Cerulli Assocs., *U.S. Responsible Investing 2024: Assessing Supply and Demand*, The Cerulli Report 157 (2024).
[179] The Department used Morningstar Direct to identify ESG mutual funds and collective investment trusts. The Department tabulated how many plans with audited filings in the BrightScope dataset held these investments.

6.1.2. Assumptions for Plans Affected by Changes to Shareholder Rights Policies

To consider how the proposed amendments to paragraph (d) would affect plans, it is helpful to group plans into three general categories:

(1) Plans that invest in securities with voting rights directly or have pass-through shareholder rights from ERISA-covered intermediaries such as master trusts, common trusts, pooled separate accounts, and 103-12 investment entities that pass-through voting rights to the plan. These plans either directly exercise or otherwise manage shareholder rights.

(2) Plans that delegate shareholder rights to a 3(38) investment fiduciary. These plans would work with the investment fiduciary to establish policies on how shareholder rights are exercised.

(3) Plans that invest in or select pooled investment vehicles that in turn invest in securities with shareholder rights. When selecting any such investment, these plans would need to comply with the requirements of paragraph (c), ensuring that the investment decision does not sacrifice investment return or take on additional risk to promote benefits or goals unrelated to financial interests of the participants and beneficiaries.

While the Department lacks comprehensive data on how many plans directly exercise shareholder rights, the Department expects that few plans do due to time and resource constraints. Throughout this analysis, the Department has assumed that most plans delegate the management of shareholder rights for plan assets to investment managers, either 3(38) investment fiduciaries hired by the plan or investment managers managing funds selected by plan fiduciaries, rather than engaging directly with a proxy advisory firm.

To validate this assumption the Department examined 2023 Form 5500 Schedule C filings, which include information on plan service providers for large plans, and found few

instances that plans made payments directly to proxy advisory firms.[180] Further, according to databases compiled by Principles for Responsible Investment and by Proxy Monitor, very few plans are filing shareholder proposals.[181] In both of these analyses, multiemployer plans were more likely to hire a proxy advisory firm or submit shareholder proposals than single-employer plans. These findings are supportive of the assumption that plans often rely on investment professionals, rather than directly engaging proxy advisory firms or filing shareholder proposals themselves, to handle shareholder rights.

Some plans would need to review and modify their policies related to shareholder rights, including those pertaining to proxy voting policies and shareholder engagement. This would include agreements with any entity to which shareholder rights have been delegated. The Department assumes the percent of plans that need to review and modify such policies to be very similar to plans needing to reconsider their investment policy statement, which is assumed to be 30 percent of plans.[182] There may be some plans that review their policies that decide that no change is needed; however, the Department lacks data to determine an appropriate assumption. The Department welcomes comments on this topic.

6.2. Investment Managers and Corporations

The proposed rule would also affect entities responsible for investment decision-making for pooled investment vehicles held by 401(k) plans, such as investment vehicles registered under the Investment Company Act of 1940, collective investment trusts (CITs), pooled separate accounts, and other pooled investment vehicles. For purposes of this analysis, these entities are referred to as "investment managers." The term refers to the entity performing the relevant investment decision-making function, including the selection of investments and, where

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[180] EBSA tabulations of 2023 Form 5500 Schedule C filings with the U.S. Department of Labor.
[181] Principles for Responsible Inv., *Resolution Database*, https://collaborate.unpri.org/shareholder-resolution; Proxy Monitor, *Historical Archive*, https://www.proxymonitor.org/historical-archive.
[182] Many of the data sources discussed for the development of the investment policy assumption are relied on in the development of this assumption. The belief is that a plan would most likely update all of its relevant policies to be consistent.

applicable, the exercise of shareholder rights. The Department identified approximately 900 different entities performing these functions for pooled investment vehicles held by large 401(k) plans.[183] Since this may not capture all such investment managers providing services for ERISA-covered pension plans, the Department assumes that 1,000 investment managers would be affected. The Department requests comments on this assumption.

To the extent that the proposed rule affects investment managers' proxy voting or shareholder engagement, publicly traded corporations would also be affected. For example, corporations may experience changes in voting participation, vote outcomes, and levels of shareholder engagement. One analysis found that between 2019 and 2024, 82 percent of environmental and social proposals were submitted to S&P 500 companies.[184] As such, the Department expects that large companies would be more affected than smaller corporations.

6.3. Proxy Advisory Firms

The proposed rule would also affect proxy advisory firms that provide proxy voting services to the plans or any persons selected to exercise, advise on, or assist with shareholder rights. Proxy advisory firms provide services to institutional investors, including research on the proposals presented on a proxy ballot, custom policy implementation, recommendations on how to vote, vote execution, and regulatory disclosure services.[185] The proposed rule clarifies that plan fiduciaries, which may include proxy advisory firms in certain circumstances, must act solely to maximize participants' and beneficiaries' financial benefit when deciding to or exercising shareholder rights.

In the U.S., there are five primary proxy advisory firms, although the market is dominated by two firms: Institutional Shareholder Services Inc. (ISS) and Glass Lewis & Co

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[183] Department tabulations using BrightScope data for audited 401(k) plans.
[184] Kosmas Papadopoulos, Jun Frank & Pinak Parikh, *U.S. Shareholder Proposals: A Decade in Motion*, ISS-Corporate (Nov. 2024), https://www.iss-corporate.com/resources/reports/us-shareholder-proposals-a-decade-in-motion/.
[185] *Proxy Voting Advice*, 87 Fed. Reg. 43,168 (July 2022).

(Glass Lewis).[186] A 2025 report released by the Congressional Research Service remarked that these two firms are estimated to account for between 90 and 97 percent of the market share.[187] However, Shu (2024) notes that these estimates often double count investment managers that subscribe to multiple proxy advisory firms, which is not uncommon. Shu estimates that in 2021, ISS held 48 percent of the market and Glass Lewis held 42 percent.[188]

ISS is an SEC registered investment adviser, and as such is required to file a Form ADV. In the SEC's 2022 "Proxy Voting Advice" final rule economic analysis, the SEC found that 173 pension and profit-sharing plans utilized ISS's services, approximately eight percent of ISS's total clients.[189] The SEC did not specify how many of those plans were public pensions or public profit-sharing plans, which would not be affected by this proposed rule.

As discussed above, in an analysis of Form 2023 Form 5500 Schedule C filings, the Department observed that it is rare for plans to make payments directly to proxy advisory firms.[190] A Cerulli Associates survey of institutional investors, on the other hand, found that 27 percent relied on a proxy advisory firm.[191] While the survey respondents included pension plans, it is unclear how many were private sector pensions. Another 31 percent of institutional investors handled proxy voting internally, and 35 percent relied on investment managers.[192] Indeed, much

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[186] Congressional Research Service, *Proxy Advisor Regulation: Recent Litigation, State Law Developments, and Federal Legislation*, (Sept. 4, 2025).
[187] Congressional Research Service, *Proxy Advisor Regulation: Recent Litigation, State Law Developments, and Federal Legislation*, (Sept. 4, 2025).
[188] Chong Shu, *The Proxy Advisory Industry: Influencing and Being Influenced*, 154 J. Fin. Econ. (Apr. 2024); John Matsusaka & Chong Shu, *Robo-Voting: Does Delegated Proxy Voting Pose a Challenge for Shareholder Democracy?*, SSRN Electronic J. (2023), http://doi.org/10.2139/ssrn.4564648.
[189] *Proxy Voting Advice*, 87 Fed. Reg. 43,168 (July 2022), (Glass Lewis is not an SEC-registered investment adviser; however, its activities remain subject to applicable Federal securities laws).
[190] EBSA tabulations of 2023 Form 5500 Schedule C filings with the US Department of Labor. Form 5500 Schedule C filings only include information on plan service providers for large plans.
[191] Cerulli's 2024 U.S. Responsible Investing Institutional Asset Owners Survey surveyed pension plans, nonprofits, insurance companies, and healthcare institutions with assets under management ranging from $100 million to greater than $5 billion.
[192] Cerulli Associates, *U.S. Responsible Investing 2024: Assessing Supply and Demand*, The Cerulli Report (2024) (Cerulli's 2024 U.S. Responsible Investing Institutional Asset Owners Survey surveyed pension plans, nonprofits, insurance companies, and healthcare institutions with assets under management ranging from $100 million to greater than $5 billion.).

of the impact of the proposed rulemaking on proxy advisory firms would be through the services they provide to investment managers.

The Department would appreciate comments on how proxy advisory firms would likely be affected by the proposed rule, particularly on what types of services plans or investment managers most often rely on proxy advisory firms and how that would be affected by the proposed rule.

7. Benefits

The proposed rule would reinforce the Department's neutrality stance regarding specific investment categories or classes and ensure that fiduciaries discharge their duties with the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan. This would clarify for fiduciaries that they cannot use nonfinancial factors in the selection of investments and would affirm that the decisions of fiduciaries regarding shareholder rights should consider the costs and benefits to the participants and beneficiaries. In doing so, the Department anticipates that plan fiduciaries who may have considered nonfinancial factors when making investment or menu selections under the 2022 rulemaking, may revisit these decisions and divest from those investments that cannot be justified on a purely financial basis. By doing so, the proposed rule should improve expected financial outcomes for plans and participants.

The discussion below identifies the major benefits the proposed rule is expected to generate. The Department welcomes comments on the identified benefits, the Department's characterizations of those benefits, and any additional benefits the Department should consider. The Department would also appreciate comments providing additional research, data, and anecdotal discussion of likely responses to the proposal.

7.1. Findings from the Literature on Investment Performance

Recent literature has analyzed the performance of ESG-related funds compared to other funds using various investments, time periods, and methodologies in their comparisons. The

body of research has generated a mixture of findings. Taking the totality of the research into consideration, the Department sees suggestive evidence that ESG-related investments underperform other investments, in which case participants and plans would experience financial benefits from avoiding ESG-related investing.

Hornuf and Yuksel (2024) performed a meta-analysis of the literature on ESG-related investment performance.[193] They assert that on average across the studies, ESG-related investments neither outperform nor underperform other investments. However, they state that the higher quality studies, meaning studies in top tier peer reviewed finance journals, are less likely than other studies to find that ESG-related funds outperform other funds.

Similarly, two detailed financial studies found that ESG-related investments are likely to underperform in the long run and were able to provide possible explanations for why some other studies' methodologies and data might have led to other findings. Pastor, Stambaugh, and Taylor (2022), focusing on the U.S. stock market, assigned "greenness measures" to U.S. stocks between November 2012 and December 2020. While ESG-related investments outperformed other investments during this period, this pattern reflected an unanticipated increase in environmental concerns.[194] With further analysis, the authors find that ESG-related investments have lower expected returns than other investments. This finding is supported by both their examination of implied costs of capital and by their analysis of realized returns purged of shocks from climate concerns and earnings.

Van Brakel, Huij, and Kyosev (2025) analyzed active U.S. equity mutual funds from January 1991 to June 2024, comparing the financial performance of ESG-related funds to that of other funds. They find that while ESG-related funds underperform other funds on a buy-and-hold basis by 63 basis points on average, their investors earn higher dollar-weighted returns of 88

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[193] Lars Hornuf & Gul Yüksel, *The Performance of Socially Responsible Investments: A Meta-Analysis*, 30 Eur. Fin. Mgmt. 1012 (2024).
[194] Lubos Pastor, Robert F. Stambaugh, Lucian A. Taylor, *Dissecting Green Returns*, Journal of Financial Economics, 146:2, 403-424, (2022), www.sciencedirect.com/science/article/pii/S0304405X22001672.

basis points on average.[195] The authors attribute this to investors in ESG-related funds responding more strongly to positive returns without overreacting to negative returns. In other words, investors in ESG-related funds exhibited better timing abilities. Given that the study observes investors who self-selected into their investment holdings, it is to be expected that the investors in ESG-related funds might differ from other investors in important ways, including potentially their financial sophistication, wealth, age, and the financial advice that they received. Indeed, other research shows that retail investors who are interested in pursuing ESG investing tend to be much more likely to seek out financial advice than other investors.[196]

Van Brakel, Huij, and Kyosev (2025) note that their findings have important implications for assessing many other studies in the field. Some studies may have overstated the relative performance of ESG-related funds because their methodology did not take into account how investor timing abilities were influencing the outcomes. Their finding that ESG-related funds had worse financial performance than other funds on a buy-and-hold basis is confirmed by Raghunandan and Rajgopal (2022), who analyzed U.S. mutual funds from 2010 to 2018 that were sponsored by the same asset manager in the same year.[197]

7.2. Estimating the Benefits from Increased Returns

Given significant evidence that ESG-related investments are likely to underperform on average, the Department estimates the benefits from assets being allocated to investments that are not ESG-related rather than ESG-related investments. As the research findings are mixed, the estimate applies a very conservative assumption about the degree of underperformance of only 10 basis points. This assumption is lower than the 63 basis points of underperformance found by

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[195] The authors use the term "sustainable" funds, which they identify based on the fund's name or its consideration of sustainability, impact, or ESG factors according to the fund's prospectus, offering documents, or regulatory filings. Jean-Paul van Brakel, Joop Huij & Georgi Kyosev, *Analyzing Sustainable Investor Returns* (Working Paper 2025).

[196] Cerulli Associates, *U.S. Responsible Investing 2024: Assessing Supply and Demand*, The Cerulli Report (2024), p.158.

[197] Aneesh Raghunandan & Shiva Rajgopal, *Do ESG Funds Make Stakeholder-Friendly Investments?*, 27 Rev. Acct. Stud. 822-863 (2022).

Van Brakel, Huij, and Kyosev (2025) because that study only looked at equity mutual funds, while this assumption is also being applied to other retirement plan investments such as bond funds. The Department is aware that some bond funds hold ESG-related investments, but less information is available about their performance. While this estimate is imprecise, it demonstrates the effect of a difference in returns.

As described above in the Affected Entities section, the Department estimates that about 0.2 percent of retirement plan assets are invested in ESG-related funds. It assumes that half of those assets, or 0.1 percent, would be allocated to a different investment under the proposed rulemaking relative to the baseline. Based on estimates of $15.2 trillion in assets held by ERISA-covered pension plans, this amounts to $15.2 billion in plan assets being allocated differently.[198] If the annual rate of return on these assets increases by 10 basis points as they shift into investments that are not ESG-related and have better long-run performance, returns in the first year would increase by $15.2 million.[199] The aggregate rate of return earned annually by large retirement plans has a geometric mean over the years 2004 to 2023 of 6.8 percent.[200] Therefore, in calculating the increased appreciation over a ten-year period, the Department assumes that the rate of return for the affected plan assets would increase from 6.75 to 6.85 percent. Under these assumptions, the identified assets over ten years would have increased by approximately $275 million.[201]

Reasons for a tentative framing of this quantitative result include:

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[198] EBSA projected ERISA-covered pension and welfare assets based on the 2023 Form 5500 filings from U.S. Dep't of Labor Employee Benefits Sec. Admin., *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 Annual Reports* (Jan. 2026), https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan; reported SIMPLE assets from the Inv. Co. Inst., *The U.S. Retirement Market,* 3rd Quarter 2025, *Quarterly Retirement Market Data*, http://www.ici.org/research/stats/retirement; and reported private pension fund and IRA assets from the Bd. of Governors of the Fed. Reserve Sys., *Financial Accounts of the United States (Z.1): Current Release* (Jan. 9, 2026), http://www.federalreserve.gov/releases/z1/Current). $15.2 trillion × 0.1% = $15.2 billion.

[199] $15.2 billion × .001 = $15.2 million

[200] U.S. Dep't of Labor, Employee Benefits Sec. Admin., *Private Pension Plan Bulletin Historical Tables and Graphs, 1975–2023* tbl.E20 (Sept. 2025), https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf.

[201] ($15.2 billion × 1.0685^{10}) – ($15.2 billion × 1.0675^{10}) = $274,780,560.

- As discussed above in the summary of a peer-reviewed meta-analysis, the research findings are mixed.
- If some portion of the increased returns would be associated with transactions in which the opposite party experiences decreased returns of equal magnitude, then this portion of the proposed rule's impact would, from a society-wide perspective, be a transfer, rather than a benefit.
- The Department is aware that bond funds and DB plans hold ESG investments but has limited available information on their performance.

7.3 Benefits from Aligning Shareholder Activities with Plan Economic Interests

The proposed amendments to paragraph (d)(2)(ii)(C) of § 2550.404a-1 would replace the requirement that, when deciding whether to exercise shareholder rights or exercising shareholder rights, plan fiduciaries must "not subordinate the interests of the participants and beneficiaries" with the requirement that plan fiduciaries "discharge their duties with respect to the plan with the exclusive purpose of maximizing the interests of the participants and beneficiaries." As amended, this text would better align with the plain text of ERISA and proposed changes in paragraph (c), and clarify that plan fiduciaries should be exercising shareholder rights only when doing so is in the economic interest of plan participants and beneficiaries. This change mirrors similar language proposed to amend paragraph (c).

The proposed amendments would also amend paragraph (d)(2)(ii)(E) to clarify that plan fiduciaries must exercise prudence and diligence in the selection and monitoring of persons designated to exercise, advise on, or assist with exercising all rights accompanying share ownership. This includes research and analysis, recommendations regarding proxy votes, shareholder engagement, administrative services with voting proxies, and recordkeeping and reporting services.

These amendments affirm that plan fiduciaries, and the service providers to which shareholder rights are delegated, should exclusively act in a way that is consistent with the

economic interest of the plan. As discussed in the Affected Entities section, the Department expects that most plans delegate the management of shareholder rights for plan assets to investment managers, either investment fiduciaries hired by the plan or by investment managers of investment funds selected by plan fiduciaries. As a result, this analysis focuses primarily on how the proposed rule would affect how investment managers exercise shareholder rights.

With the clarification of the proposed rule, investment managers exercising shareholder rights for plan assets would no longer feel compelled to devote resources to shareholder activities that lack economic justification. This should result in both a reduction of shareholder activities related to ESG topics and an increase in activities on more financially relevant topics.

As discussed below in the Costs section, the Department expects that these investment managers may experience cost savings by devoting fewer resources to researching proxy proposals and conducting shareholder engagements where they determine that the matter is not reasonably expected to advance the economic interest of plan participants and beneficiaries. Under the assumptions explained in the Costs section, the Department estimates that investment managers could save $618.3 million annually by devoting fewer resources to proxy voting and $254.0 million annually by devoting fewer resources to shareholder engagement. Further, the Department assumes that publicly traded corporations could save $240.6 million annually by devoting fewer resources to shareholder engagement.

If investment managers or corporations reinvest these resources into activities that increase shareholder value, it would be a benefit for investors, including plan participants and beneficiaries. The extent to which cost savings are reinvested would depend on whether nonfinancial topics had crowded out more financially relevant issues or had instead driven extra engagement. This analysis does not attempt to estimate the proportion of resources that investment managers would redirect, nor does it attempt to estimate what rate of return such investments might earn. If a significant amount of resources are invested in shareholder activities

that increase shareholder value, this would improve investment outcomes for plan participants and beneficiaries.

A study by Heath, Macciocchi, and Ringgenberg (2025) collected information on shareholder engagement from stewardship reports published by 11 institutional investors between 2019 and 2023. Using a discrete choice model that assumes an institutional investor will engage if the expected benefit of shareholder engagement exceeds the expected cost, the study finds, on average, institutional investors' shareholder engagement activity is consistent with the belief that a $10,000 investment in engagement will raise a firm's value by 0.35 basis points.[202]

This finding is not directly applicable to the benefits that might be expected from investment managers reinvesting cost savings into more efficient uses, as it captures an implicit expectation of past behavior of a small sample of large institutional investors and does not capture the variability of expected returns for different types of firms and engagement issues. The Department also would not view the 0.35 basis point increase in firm value estimate as scalable to all engagement activity because investment managers are likely already pursuing the engagement opportunities they expect to generate the highest returns. Accordingly, resources redirected under the proposed rule would not be expected to generate the same return as the engagements observed in the study. To the extent the proposed rule redirects resources away from shareholder activities that are not economically motivated, those resources would likely generate higher marginal returns in alternative, more financially relevant uses.

The Department would appreciate comments, data, and studies that would assist with estimating the potential benefits of investment managers and publicly traded corporations that reinvest cost savings into more efficient uses. The Department is particularly interested in how any such actions would affect shareholder value. The Department also requests descriptions of any other benefits that would result from this proposal.

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[202] Davidson Heath, Daniele Macciocchi, & Matthew C. Ringgenberg*, The Economics of Investor Engagement*, Eur. Corp. Governance Inst., Finance Working Paper No. 1075/2025 (Dec. 2025).

7.3. Conclusion

The proposed rule could benefit plans, plan participants, and beneficiaries by focusing plan fiduciaries on the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan. This focus could lead to assets moving from lower performing ESG-related funds to higher performing other funds leading to higher overall returns. The proposed rule also affirms that plan fiduciaries, and the service providers to which shareholder rights are delegated, should act with the exclusive purpose of maximizing the interests of plan participants and beneficiaries in their retirement income or financial benefits under the plan. This could lead to a reduction of resources devoted to shareholder activities that lack economic justification and allow investment managers or corporations to reinvest these resources into activities that increase shareholder value.

8. Costs

This proposed rule imposes costs on plans and their service providers to review the rule; update investment policy statements and policies and procedures related to exercising shareholder rights as needed; and change investments to comply with the proposed rules requirements as needed. The proposed rule could also lead to cost-savings for investment managers and corporations as fewer resources are devoted to shareholder activities that are not consistent with the economic interests of plan participants. Table 5 displays relevant assumptions for the cost estimates. The following sections quantify the costs and provide a qualitative discussion of anticipated cost savings associated with plans' response to the proposal.

Table 5.—*Assumptions for Cost Estimates*

Entity and Action	Proportion of Total	Entities
Plans, Rule Review	100%	837,000
Plans, Review and Modify Investment Policy Statement	30%	251,100
Plans, Revise Investments	15%	125,550
Plans, Review and Modify Shareholder Rights Policies	30%	251,100
Service Providers (Assumed to Conduct Common Actions for 85% of Plans)	100%	6,950

Professional	Hourly Labor Cost
Lawyer	$187.58
Plan Fiduciary	$206.11

8.1. Costs Associated with the Proposal

The Department estimates this rule to have a first-year transition cost of $361.18 million to implement the proposed rule. These costs include reviewing the proposed rule; plans and investment managers updating investment policy statements and written policies governing the exercise of shareholder rights and engagement as needed; and changing investments as needed to comply with the proposed rules requirements.

The Department recognizes that, in aggregate, the number of plans and participants impacted by this rulemaking, which are key inputs into estimating the cost, are uncertain. This difficulty stems from many of the factors discussed in the need for regulation section, such as the lack of a common definition of ESG, limitations in the reporting of plan and participant ESG-related investment, the extent to which plans and individuals hold assets with voting rights, as well as the overlap between plans impacted by the proposed rules' guidance on investment selection and those affected by the proxy voting clarifications. Additionally, simply holding or offering an investment that meets one of the many definitions of ESG does not necessarily indicate the selection was not based on relevant economic factors. Rather, for plans whose investment selections were made for the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan, this rulemaking may not cause a plan to act beyond rule and policy review.

8.1.1. Cost of Rule Review

Plans and service providers affected by this rule will review the rule and consider a course of action for compliance. As discussed in the Affected Entities section, the Department estimates this would affect 837,000 plans.

The Department believes that service providers will be the principal conduit for information related to the proposed rule and compliance requirements. The Department assumes that approximately 85 percent of plans employ one of the estimated 6,950 service providers to administer their pension plans. The remaining 15 percent of plans are assumed to administer their plans in-house and will therefore conduct their own rule review.[203] The Department estimates that a legal professional will spend approximately five hours reviewing the rule and creating a work plan that addresses compliance for their organization.[204] The costs for rule review are summarized in Table 6 below.

Table 6.—*Costs for Rule Review and Implementation Planning*

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Wage (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Rule Review (Service Providers)	6,950	5	$187.58	34,750	$6,518,405
Rule Review (In-House)	125,550	5	$187.58	627,750	$117,753,345
Total				662,500	$124,271,750

8.1.2. Cost to Revise and Update Policies and Investments

Several of the affected parties will need to review and potentially revise their investment policies. A portion of plans will need to review and update their investment policy statement. Within this group of plans, there will be a subgroup that also must revise their asset holdings. Those investment managers that have integrated ESG into their funds investment strategy will need to review and revise these policies to remain compatible with ERISA. These revised policies will also need to be reviewed by those plans affected for monitoring purposes. These actions are estimated to have a burden equivalent to approximately $236.91 million in transition

[203] This assumption is constructed using the past five years of responses to the PSCA *Annual Survey of Profit Sharing and 401(k) Plans*.

[204] This estimate is constructed assuming approximately 120 relevant pages and an average reading speed of 250 words per minute (WPM) and an average words per page (WPP) of approximately 250. Therefore, it is expected to take approximately 120 minutes on average. [(250 WPM / 250 WPP) x 120 = 120 minutes) The remaining estimated time burden is to account for follow on tasks, such as memo writing, planning for implementation, and other tasks resulting from rule changes.

costs. Table 7 displays the components of the estimates that will be discussed in the following subsections.

Table 7.—*Cost to Revise and Update Policies and Investments*

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Labor Cost (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Review and Update Plan Investment Policy Statement	251,100	1	$187.58	251,100	$47,101,338
Implement Investment Changes (Plan)	125,550	3	$206.11	376,650	$77,631,332
Select and Transition to new QDIA(s) [Participant Directed DC plans]	1,082	3	$206.11	3,246	$669,033
Review Investment Policies (67% of Investment Managers)	670	8	$206.11	5,360	$1,104,750
Update Investment Policies (75% of reviewed policies require updating)	503	16	$206.11	8,048	$1,658,773
Plans Reviewing Revised Fund Investment Policy	418,500	0.5	$187.58	209,250	$39,251,115
Review and Update Plan Shareholder Rights Policy	251,100	1	$187.58	251,100	$47,101,338
Review Fund Shareholder Engagement Policy (67% of Investment Managers)	670	8	$206.11	5,360	$1,104,750
Update Fund Shareholder Engagement Policy (75% of reviewed policies require updating)	503	16	$206.11	8,048	$1,658,773
Review Fund Shareholder Engagement Policy (Plan)	418,500	0.25	$187.58	104,625	$19,625,558
Total				1,222,787	$236,906,759

8.1.2.1. Plan Investment Policy Statement and Investments Update

The Department believes that some plans may currently include consideration of ESG or other nonfinancial factors in their investment policy statement, which will need to be reviewed and modified for compliance. As described in the Affected Entities section, the Department estimates that approximately 30 percent of the 837,000 affected retirement plans will review and modify their investment policy statements.

The Department estimates that it will take a legal professional one hour to review the existing investment policy statement and make any required changes. The time burden is relatively low based on the idea that this exercise would principally be one of revision to a prior version of an accepted policy in most cases. The Department requests comments on these assumptions.

Plans would also be responsible for reviewing the policies of any service providers they engage to confirm they are compatible with the proposed changes. The Department assumes that roughly half of all affected plans would review external policies and allocates 30 minutes for the review of investment policies, and 15 minutes to review the shareholder engagement policies of relevant service providers. The Department requests comments on these assumptions.

The Department believes that plans with ESG and other nonfinancial considerations in their investment selection will need to review their portfolio or menu for compliance with the proposal. As presented in the Affected Entities section, the Department estimates that 15 percent of the 837,000 plans would potentially be affected.

Participant-directed DC plans must review their investment menu and may need to revise their plan's designated investment alternatives (DIAs) and/or qualified default investment alternative (QDIA). While the Department acknowledges that changing a plan's QDIA would generally be a more involved process than changing other options in the investment line-up, data indicate the prevalence of ESG-related investments as QDIAs to be exceedingly rare. A 2024 Cerulli survey of DC plan consultants indicated that slightly less than 1 percent of plans with ESG funds on the plan menu have an ESG-focused QDIA.[205] Using the same assumed rate of ESG use presented above combined with this approximation of 1 percent results in 0.15 percent of the approximately 721,000 plans with participant direction potentially having an ESG-related

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[205] Cerulli Associates, *U.S. Defined Contribution Distribution 2024: Addressing the Obstacles to Inclusion of Alternatives in DC Plans* 161 (2024).

investment as a QDIA.[206] The Department estimates that these plans will require additional time to select, and plan the transition to, alternative QDIAs. These plans would be part of the group of plans changing their investments in response to the proposed rule.

The Department assumes that for each affected plan a fiduciary will spend on average three hours reviewing their investments or menu for compliance with the proposal and making necessary changes to their investment portfolio or menu. For the subgroup of plans that would change QDIAs the Department assumes an additional three hours to account for the additional burden associated with the transition. The costs for this provision are displayed in Table 7. The Department requests comment on these assumptions.

8.1.2.2. Investment Managers Review and Revise Fund Investment Policies

Investment managers typically include their investment policy or strategy as a prominent component in the fund prospectus or other disclosure document, detailing how the manager intends to manage the fund. These statements will need to be reviewed by fund managers in cases where their policy involves ESG or other nonfinancial considerations in their asset selection and fund management.

As presented in the Affected Entities section, the Department assumes there to be approximately 1,000 investment managers servicing the ERISA retirement savings space. Not all these investment managers will need to review or revise their investment policies, and not every manager who reviews their fund policies will need to change their policy or investments. The Department used the 2025 Callan Asset Manager Sustainable Investment Practices Study to develop assumptions related to these rates of review and revision.[207] This study offers contemporary insights into fund behavior that allows the Department to focus on US based funds by several categorical dimensions related to the two rates.

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[206] Dep't of Labor, Employee Benefits Sec. Admin., *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 Annual Reports* tbl.D5 (Jan. 2026) (data extracted July 28, 2026) (rounded value calculated by author from source data).
[207] Callan LLC, *2025 Asset Manager Sustainable Investment Practices Study* (2025).

The Department assumes that roughly two-thirds of funds, and therefore fund managers, will have cause to review their policies. Of this group of managers, it is further assumed that roughly three-quarters will need to update their policies in order to remain viable investments for ERISA plan assets. Taken together, these two rates result in roughly half of funds requiring policy updates. The Department assumes that a team of professionals will spend roughly eight hours reviewing the various fund policies. Similarly, a team would spend another 16 hours on updating the policies for funds requiring action. The resulting cost estimate, which is shown in Table 7, is $2.76 million.

8.1.2.3. Cost to Revise Plan's Written Shareholder Rights Policies

The proposed amendments to paragraph (d)(2)(ii) would clarify that (1) when deciding whether to exercise shareholder rights or exercising shareholder rights, plan fiduciaries act with the exclusive purpose of maximizing the financial interest of participants and beneficiaries, and (2) the requirement for plan fiduciaries to exercise prudence and diligence in the selection and monitoring of any persons selected to exercise shareholder rights or otherwise advise on or assist with exercises of shareholder rights, including shareholder engagement and all rights accompanying share ownership. This would affect plans that delegate voting rights to a 3(38) investment manager, or that invest in or select a designated investment alternative that holds plan assets with voting rights. Plan fiduciaries are already required to periodically review proxy voting policies under paragraph (e)(3)(ii); however, the Department expects that plan fiduciaries would need to review and potentially update policies and procedures related to exercising shareholder rights to reflect the proposal.

As described in the Affected Entities section, the Department assumes that 30 percent of plans would need to review and modify their policies and procedures related to shareholder rights. This assumption is based on statistics related to interest in ESG as a proxy for the proportion of plans that are affected.

The Department further estimates that, during the first year, each affected plan would have a legal professional spend an additional hour reviewing and modifying its policies and procedures for compliance with the proposed rule. The Department requests comments on these assumptions.

At an average hourly rate of $187.58, implementing these reviews and updates would cost $47.10 million in the first year.[208] There would not be costs for this activity in subsequent years as maintaining compliance would be part of the standard practice of plan fiduciaries ensuring they are in ongoing compliance with the body of relevant laws and regulations.

The Department does not expect the proposed amendments to paragraph (d)(2)(ii)(E) to result in increased monitoring costs in subsequent years for plans invested in pooled investment vehicles or offering one as a designated investment alternative. The Department requests comments on this assumption.

8.1.2.4. Cost to Revise Fund Shareholder Engagement Policies

Investment managers would also need to ensure their shareholder engagement policies are in harmony with the proposal's standards. The Department believes that this review and update process will require similar resources as those to review and revise fund investment policies. Therefore, the Department arrives at the same estimated cost for this component of the proposal of roughly $2.76 million in transition burden, as shown in Table 7.

8.1.2.5. Possible Costs from Increased Litigation Risk

It is possible that the proposed rule would lead to increased costs if plans and plan fiduciaries face increased litigation risk because they can no longer rely on the tiebreaker provision. Such costs would affect plans, plan sponsors, and plan fiduciaries. It is unclear what

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[208] Wage rates are based upon internal Department calculation using 2024 labor cost data. For a description of the Department's methodology for calculating wage rates. See EBSA, *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculations* (June 2019), https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.

changes in litigation risk would result from the proposal, so the Department is not attempting to quantify these effects. The Department seeks comment on how litigation risk would change as a result of the removal of the tiebreaker provision, as well as information that would allow the Department to quantify these effects.

8.2. Cost Savings Associated with the Proposed Amendments to Paragraphs (b) and (c)

Researchers have found that the fees associated with ESG-related funds generally tend to be higher than those for other funds. One possible reason that ESG-related funds have higher fees is to cover the cost of researching the nonfinancial considerations incorporated into these funds. Raghunandan and Rajgopal (2022) compared ESG-related funds to other funds sponsored by the same asset manager in the same year. They found that ESG-related funds charged higher fees.[209] Additionally, a study by Huij et al. (2023) found that a green mutual fund on average has fees that are five to ten basis points higher than a similar non-green mutual fund.[210] This result provides a sense of the magnitude of the cost savings that would result from reduced ESG-related investing under the proposal.

The Department conservatively assumes that an ESG-related mutual fund has an excess fee of five basis points and only quantifies the effect for mutual funds. The Federal Reserve reports that private retirement plans hold $5.7 trillion in mutual funds.[211] As described above in the Affected Entities section, the Department estimates that about 0.1 percent of these assets, or $5.7 billion, would be allocated to an ESG-related fund in the baseline and a fund that is not ESG-related under the proposal.[212] This means plans, participants, and investment managers

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[209] Aneesh Raghunandan & Shiva Rajgopal, *Do ESG Funds Make Stakeholder-Friendly Investments?*, 27 Rev. Acct. Stud. 822-863 (2022).
[210] Joop Huij, Dries Laurs, Philip Stork & Remco C.J. Zwinkels, *Are Investors Paying to Be Green? Evidence from Mutual Funds* (Working Paper 2023).
[211] U.S. Federal Reserve Board of Governors, *Financial Accounts of the United States (Z.1): Table L.118 (Levels: Private Pension Funds)* (June 12, 2025), https://www.federalreserve.gov/releases/z1/current/.
[212] $5.697 trillion x 0.1% = $5.697 billion

would experience an annual cost savings of approximately $2.85 million, absent any compounding appreciation, due to reduced fees.[213]

It is uncertain how these cost savings would be distributed among investors, such as plans and participants, and investment managers. While fees are paid by plans and participants, sometimes an investment manager will issue a waiver to temporarily reduce fees. In such cases, the costs of providing the fund, including research costs, may be partially borne by the investment manager, who would therefore also experience some of the cost savings from reduced ESG investing. Black and Kolbel (2025) found that "ESG funds" are more likely than "conventional funds" to have a waiver that temporarily reduces fees, and that the amounts of the waivers are larger for such ESG funds.[214] The authors speculate that ESG fund providers may have issued these temporary waivers because they anticipated substantial growth of ESG investing and wanted to use lower fees to compete for early flows.

8.3. Cost Savings Associated with the Proposed Amendments to Paragraph (d)

The Department expects that the proposed amendments to paragraph (d) would result in cost savings by clarifying that shareholder rights should be exercised with the exclusive purpose of maximizing the interests of participants and beneficiaries, regardless of whether those rights are managed directly by a plan or 3(38) investment manager with respect to directly held plan assets, or indirectly by an investment manager of a pooled investment vehicle to whom shareholder rights are delegated.[215] The discussion below explores the potential cost savings for plans and participants, investment managers, and publicly traded corporations.

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[213] $5.697 billion x 0.0005 = $2.8485 million

[214] Aaron J. Black and Julian F. Kolbel, *Pricing Differentiated Funds: The Puzzle of ESG Fund Fees*, Swiss Finance Institute Research Paper Series N.24-109, (July 26, 2025).

[215] In managing the assets of a pooled investment vehicle that is not considered to hold plan assets under ERISA, such as a mutual fund, an investment manager would generally not be acting as an ERISA fiduciary. However, in managing the assets of a pooled investment vehicle that is considered to hold plan assets under ERISA, such as a CIT, an investment manager would be acting as an ERISA fiduciary and would be subject to section 2550.404a-1 and the proposal's amendments. For investment managers that manage both pooled investment vehicles that hold plan assets and pooled investment vehicles that do not, changes in practices for managing the exercise of shareholder rights or conducting shareholder engagement with respect to ERISA plan assets to comply with the proposal may carry over to non-ERISA assets, particularly if the investment manager conducts those activities on behalf of all its managed assets concurrently.

8.3.1. Cost Savings for Plans and Participants

As discussed in the Affected Entities section, the Department expects that most plans delegate the management of shareholder activities for plan assets to investment managers, either investment fiduciaries hired by the plan or by investment managers of investment funds selected by plan fiduciaries. To the extent that the proposed amendments result in cost savings for investment managers, as described below, they may lower investment management fees for plans, participants, and beneficiaries. It is uncertain how much of the cost savings would stay with investment managers and how much would be passed on to plans, participants, and beneficiaries. The Department requests comments describing these effects.

8.3.2. Cost Savings for Investment Managers and Publicly Traded Corporations

The proposed rule would preclude investment managers that either manage plan assets directly or a pooled investment vehicle in which a plan invests, from devoting resources to shareholder activities that are not consistent with the economic interests of plan participants. As a stewardship approach that focuses on increasing shareholder value would benefit all shareholders, the Department expects that investment managers would broadly adopt policies focusing exclusively on promoting investors' economic interests, not just for plan assets or funds marketed to plans. This may result in cost savings in three ways:

1) Investment managers may spend less time reviewing, researching, and voting on proxy statements that are not consistent with promoting the economic interests of plan participants and beneficiaries;
2) Investment managers may allocate fewer resources to shareholder engagement that is not consistent with promoting the economic interests of plan participants and beneficiaries; and
3) To the extent that the proposed rule refocuses investment managers' shareholder activities, publicly traded corporations would devote fewer resources engaging with shareholders.

Below, the Department considers how the proposed rule may affect proxy voting and shareholder engagement behavior and the related cost savings for investment managers and publicly traded corporations. The Department invites comments on its characterization of the actions of investment managers and corporations and on the assumptions used in the analysis below.

8.3.2.1. Proxy Voting

As discussed in the Need for Regulation section, in recent years, ESG themes have become more prevalent in proxy voting, both for management proposals and shareholder proposals. The Department expects that the proposed rule would encourage investment managers to devote fewer resources to researching proposals that are not reasonably expected to affect the economic value of the investment. This would either result in cost savings for the investment manager or, if investment managers redirect resources to activities that increase shareholder value, this would result in a benefit for investors, including plan participants and beneficiaries. This is discussed further in the Benefits section.

The Department received several comments from investment managers on its 2020 NPRM noting that their proxy voting and shareholder engagement are consistent with promoting the long-term economic interests of investors and that large investment managers are able to engage in such activities at a low cost due to economies of scale.[216] The Department understands that, with economies of scale, the cost of researching and voting proxy votes for large financial institutions may be negligible relative to other costs. However, in aggregate, the Department expects that cost savings could be substantial for investment managers.

The Department does not expect the proposed rule to affect the number of shareholder proposals. Most shareholder proposals have historically been filed by individuals, public pension funds, socially responsible investment funds, or advocacy groups.[217] Cohen and Hu (2025) found

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[216] See, e.g., Comment Letters from BlackRock, Vanguard, State Street, and Fidelity in Employee Benefit Sec. Admin., *Public Comments on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights*, RIN 1210-AB91, https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91.
[217] Proxy Monitor, *Historical Archive*, https://www.proxymonitor.org/historical-archive.

that in 2025, the ten most active shareholders were responsible for 63 percent of total shareholder proposals. Two of these shareholders were individual proponents, four were social investment entities, two were anti-ESG proponents, one was a public pension plan, and one was a union pension plan.[218] Entities with non-economic motives would likely continue to file shareholder proposals, so the Department does not expect that the proposed rule would have a significant effect on the number of shareholder proposals filed each year. It is possible, however, that the number of shareholder proposals included in proxy statements will evolve in light of recent staff statements.[219]

There is significant uncertainty about how the proposed rule would affect the amount of time investment managers devote to researching proposals. To understand the potential magnitude of cost savings due to decreased time spent reviewing, researching, and voting on proxy statements, the Department assumes that, on average, each investment manager would vote on proxy ballots for the 1,500 companies in the S&P 1500 Index. The Department assumes that on average, the total time that investment professionals spend to review the proxy statement, research, make a voting determination, and vote is equal to twice the time required to read the proxy statement.

The Department is not aware of data on what proportion of time spent voting proxies is devoted to topics without an economic basis. In the estimate presented below, the Department assumes that, on average, the proposed rule would result in a 20 percent reduction in the time spent reviewing proxy statements, performing research, making voting determinations, and voting proxy ballots. The table below shows estimated cost savings under these assumptions.

Table 8.—*Estimated Annual Cost Savings Due to Changes in Proxy Voting Behavior*

	Calculations	Estimates
Inputs		

[218] H. Rodgin Cohen & June Hu, *2025 Proxy Season Review: Rule 14a-8 Shareholder Proposals*, Harv. L. Sch. F. Corp. Governance (Aug. 2025), https://corpgov.law.harvard.edu/2025/08/19/2025-proxy-season-review-rule-14a-8-shareholder-proposals/.

[219] Refer to the Baseline section.

	Calculations	Estimates
Investment Managers	(A)	1,000
Companies / Proxy Statements	(B)	1,500
Average Pages per Proxy Statement	(C)	125 [a]
Reading Rate (Pages per Hour)	(D)	25 [b]
Multiplying Factor for Research	(E)	2
Percent Reduction in Time Due to Proposal	(F)	20%
Hourly Wage	(G)	$206.11 [c]
Estimated Values		
Assumed hours spent reviewing, researching, and voting each proxy statement per investment manager	(H) = (C) / (D) × (E)	10
Estimated decrease in hours spent reviewing, researching, and voting each proxy statement per investment manager	(I) = (H) × (F)	2
Estimated Total Cost Savings	**(J) = (A) × (B) × (G) × (I)**	**$618,330,000**

[a] The Department assumes that the average length of a proxy statement is 125 pages. This estimate is based on a randomly selected sample of proxy statements issued by companies in the S&P 1500 Index between 2025 and 2026. This analysis considered small-, mid-, and large-cap companies.

[b] The Department assumes that an investment professional can review proxy statements at a pace of 25 pages per hour. This rate reflects an assumed reading pace of 250 WPM and an assumed average of 600 WPP. The 600 WPP assumption is higher than the 250 WPP assumption used for the proposed rule (see section 8.1.1) because proxy statements are generally single-spaced and more text dense.

[c] In this analysis, the Department uses labor cost estimates of a financial analyst or adviser for an investment professional.

The Department acknowledges that proxy voting policies and strategies vary significantly between investment managers and that this is a very simplified model. In the Uncertainty section, the Department presents a sensitivity analysis of this model, varying the number of proxy ballots an investment manager votes and the assumed percent reduction in time spent on each proxy ballot due to the proposed rule.

In addition, investment managers often rely on proxy advisory firms for research, voting recommendations, and other services associated with exercising shareholder rights. Many of these services relate to ESG and other nonfinancial matters, and therefore under the proposal, investment managers' demand for proxy advisory firms' services would decrease. The

Department requests comments and data that would allow it to estimate the cost savings from decreased reliance on proxy advisory firms for information on non-economic issues.

The Department would appreciate comments on its assumptions and requests data or anecdotal evidence to inform these estimates. The Department also requests input on whether any cost savings would be reinvested in activities that increase shareholder value and whether such changes would affect fees charged to plans. Finally, the Department seeks comment on how recent trends away from ESG among some proxy advisory firms and investment managers would interact with the proposed rule.[220]

8.3.2.2. Shareholder Engagement

While often less visible than shareholder proposals, shareholder engagement demands significant resources from investment managers and publicly traded companies. The Department expects that the proposed rule would encourage investment managers to either devote fewer resources to shareholder engagement or to redirect resources to activities that are anticipated to provide better returns to shareholders. To the extent that shareholder engagement from investment managers would decrease due to the proposed rule, this would result in cost savings for both investment managers and publicly traded corporations. As discussed in the Affected Entities section, the Department assumes that 1,000 investment managers would be affected by the proposed amendments.

To estimate the number of engagements that each investment manager conducts, the Department considered the analysis by Heath, Macciocchi, and Ringgenberg (2025) of 11 large institutional investors between 2019 and 2023. The analysis found that the institutional investors in the sample engaged, on average, with 320 firms per year. This included letters, emails, phone calls, or in-person or virtual meetings. The authors found that active managers engaged more than passive managers, and engagement was more likely in firms where institutional investors

[220] For more information, see the Need for Regulation section.

held large dollar stakes. As such, investors were more likely to engage with large-cap firms than with small-cap firms.[221] While the study only considered large institutional investors, these account for the majority of shareholder engagements. For example, BlackRock had more than 3,300 engagements with 2,300 companies in 2024.[222] Small and mid-sized investment managers would also be affected by the proposed rule.

While Heath, Macciocchi, and Ringgenberg (2025) considered all forms of engagement, the Department expects that brief correspondence and routine communications constitute a significant portion of total shareholder engagement but require substantially fewer resources per interaction. Accordingly, the Department's cost savings estimates focus on substantive engagement meetings, such as formal meetings and structured discussions that require significant preparation, participation, and follow-up. The Department assumes that 20 percent of total engagements are substantive engagement meetings, or approximately 60 substantive engagement meetings per investment manager, per year on average. Notably, the Department expects investment managers would broadly adopt policies that limit shareholder engagement to those that promote investors' economic interests, not just for plan assets or funds marketed to plans.

To better understand how the proposed rule might affect shareholder engagement activity, the Department looked at the share of engagements focused on environmental and social topics as a proxy for the decrease in engagements attributable to the proposed rule. In the Need for Regulation section, the Department provided a summary of the shareholder engagement activity by topic from three investment managers in 2024. Two of these investment managers, BlackRock and Russell Investments published information on engagements by topic:

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[221] Davidson Heath, Daniele Macciocchi, & Matthew C. Ringgenberg, *The Economics of Investor Engagement*, European Corporate Governance Institute, Finance Working Paper No. 1075/2025 (Dec. 2025).
[222] BlackRock, *Investment Stewardship Annual Report: Jan. 1–Dec. 31, 2024* (2024), archived at https://web.archive.org/web/20250929235951/https://www.blackrock.com/corporate/literature/publication/annual-stewardship-report-2024.pdf.

(1) BlackRock reported that 33 percent of their engagements addressed climate and natural capital and 35 percent addressed company impacts on people;[223] and

(2) Russell Investments reported that 41 percent of their engagements were focused on environmental issues and 16 percent were focused on social issues.[224]

Based on these values, the Department assumes that resources devoted to shareholder engagements will decline by approximately 50 percent due to the proposed rule. However, it is important to note that investment managers report their engagement activity in different ways, counting meetings, companies, or topics differently or considering different geographies. In addition, a single engagement may cover multiple topics, so it is difficult to identify the number of meetings that exclusively discussed social or environmental issues. In addition, the Department acknowledges that there are several limitations with applying the reported shareholder engagement activity of the investment managers surveyed in this analysis activity to all investment managers.

The table below presents estimated cost savings for investment managers from the proposed rule. The Department assumes that on average, each shareholder engagement will require 16 hours of investment professional time, 16 hours of stewardship analyst time, two hours of legal professional time, and four hours of administrative staff time. In addition, the Department assumes average external costs of $2,000 per engagement, including legal counsel, consultants, research, and meeting-related expenses. The Department acknowledges that the resources that an investment manager devotes to an engagement depend on the investment manager, complexity of the issue, and the form of engagement.

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[223] BlackRock, Inc., *BlackRock Investment Stewardship: 2024 Annual Report* (2024), archived at https://web.archive.org/web/20250929235951/https://www.blackrock.com/corporate/literature/publication/annual-stewardship-report-2024.pdf.

[224] Russell Investments, *Investment Stewardship Report 2024* (2024), https://russellinvestments.com/content/dam/ri/files/us/en/common/corporate/investment-stewardship-report.pdf.

Table 9.—*Estimated Annual Cost Savings Due to Changes in Investment Managers' Engagement Behavior*

	Engagements [a] (A)	Percent of Engagements Ceasing (B)	Hours (C)	Hourly Labor Cost [b] (D)	Other Costs, Per Engagement (E)	Total Cost Savings (A × B) × ((C × D) + E)
Internal Personnel						
Financial Manager	60,000	50%	16	$206.11	-	$98,932,800
Stewardship Analyst	60,000	50%	16	$155.17	-	$74,481,600
Legal Professional	60,000	50%	2	$187.58	-	$11,254,800
Administrative Staff	60,000	50%	4	$77.85	-	$9,342,000
External Costs						
Legal/Consultant Fees/Travel	60,000	50%	-	-	$2,000	$60,000,000
Cost Savings						$254,011,200

[a] The number of engagements reflects the assumption that 1,000 investment managers each conduct 60 significant engagements, annually.

[b] In this analysis, the Department uses labor cost estimates of a financial analyst or adviser for an investment professional, financial specialist for a stewardship analyst, a lawyer for a legal professional, and a secretary or administrative assistant for administrative staff.

Similarly, the table below shows estimated cost savings for publicly traded corporations from the proposed rule. The Department assumes that on average, each shareholder engagement will require 20 hours of investor relation personnel time, four hours of executive or senior management time, three hours of legal professional time, and four hours of administrative staff time. In addition, the Department assumes average external costs of $2,000 per engagement, including legal counsel, consultants, research, and meeting-related expenses. As with investment managers, the resources that a corporation spends on an engagement can vary significantly, depending on the corporation, complexity of the issue, and form of engagement.

Table 10.—*Estimated Annual Cost Savings Due to Fewer Non-Financial Engagements: Publicly Traded Corporations*

	Engagements [a] (A)	Percent of Engagements Ceasing (B)	Hours (C)	Hourly Labor Cost [b] (D)	Other Costs, Per Engagement (E)	Total Cost Savings (A × B) × ((C × D)+E)
Internal Personnel						
Investor Relations Personnel	60,000	50%	20	$206.11	-	$123,666,000
Executive/Senior Management	60,000	50%	4	$255.94	-	$30,712,800
Legal Professional	60,000	50%	3	$187.58	-	$16,882,200
Administrative Staff	60,000	50%	4	$77.85	-	$9,342,000
External Costs						
External Legal or Consultant Fees	60,000	50%	-	-	$2,000	$60,000,000
Cost Savings						$240,603,000

[a] The number of engagements reflects the assumption that 1,000 investment managers each conduct 60 significant engagements on average, annually.

[b] In this analysis, the Department uses labor cost estimates of a financial analyst for investor relations personnel, a CEO for executive and senior management, a lawyer for a legal professional, and a secretary or administrative assistant for administrative staff.

The Department would appreciate comments on the reasonableness of the assumptions above as well as any supporting data or anecdotal evidence that would improve these estimates. The Department acknowledges that there is significant uncertainty about how the proposed rule would affect the resources investment managers and corporations devote to shareholder engagement. In the Uncertainty section, the Department presents a sensitivity analysis of the cost savings estimates, varying the average number of engagements per year and percent reduction in engagements due to the proposed rule.

The Department has characterized the reductions in resources that investment managers and publicly traded corporations are expected to devote to proxy voting and shareholder engagement activities as cost savings rather than as benefits. The Department recognizes that OMB Circular A-4 treats certain categories of effects as capable of being characterized as either costs or benefits, with the distinction depending primarily on the accounting conventions an agency has followed in past analyses. The Department notes that its 2020 rulemaking addressing

fiduciary duties regarding proxy voting and shareholder rights characterized similar effects as cost savings in its narrative discussion, while incorporating them into the benefits calculation of the accompanying regulatory impact analysis. In light of this mixed treatment in past Department rulemakings, the Department requests comment on whether these effects should instead be characterized as benefits rather than cost savings, and on the considerations relevant to that determination.

8.4. Conclusion

The Department anticipates that the proposal would lead to a significant amount of both costs and cost savings. The Department estimates this proposed rule would have a one-year transition cost of $361.18 million to implement the changes discussed in the preamble. The Department also estimates an annual cost savings of $1,115.79 million from a decrease in shareholder activities due to the rule. The Department would appreciate any information or viewpoints that would allow it to better describe the impact of the proposal on costs and cost savings.

9. Transfers

The Department anticipates that the proposal would result in transfers between parties as assets are moved from ESG-related investments to other investments. It would favor some financial institutions to the detriment of others, and some sectors of the economy to the detriment of others. The expected transfers are discussed in the following subsections.

9.1. Transfers Between Financial Institutions

The Department anticipates that some plans would change their investment lineups in response to the proposed rule. Plans holding ESG-related and other investments that were selected using nonfinancial factors in the baseline of this analysis would shift their lineups to other funds. In aggregate, participants would invest less plan assets in ESG-related funds and more in funds that are not related to ESG. This would constitute a transfer from financial institutions that specialize in sponsoring ESG-related investments to those financial institutions

who specialize in other investments. Financial institutions associated with ESG-related investments, including ratings agencies, would experience a decrease in demand for services while financial institutions associated with other investments would experience an increase in demand for services. The Department has not attempted to quantify the potential size of this transfer.

9.2. Transfers Between Sectors of the Economy

The Department anticipates that some ERISA assets that are held in ESG-related funds in the baseline would instead be held in funds that are not related to ESG under the proposed rule. ESG-related funds tend to invest in certain sectors of the economy but not others. Under the proposal, these ESG-favored sectors would experience reduced investment, likely leading to lower stock values and a higher cost of raising capital. On the other hand, other sectors of the economy would see more investment and tend to prosper. This effect would represent a transfer from ESG-favored sectors to other sectors of the economy. The potential size of this effect is uncertain.

The Department requests comments on the transfers that would result from the proposal, as well as any supplemental information that would allow the Department to better characterize the transfers.

10. Regulatory Alternatives

This proposed rule is a response to prior attempts to extend fiduciary protections to allow for participant preferences or collateral effects to be considered in investment selection. As presented in the preamble to this proposed rule, the Department does not believe the current rule represents the best interpretation of ERISA. This proposed rule makes clear that a plan fiduciary must act in the exclusive financial interest of the plan and its participants, as set forth in ERISA. This proposed rule is meant to remove any uncertainty surrounding the issue of nonfinancial consideration, therefore removing risk exposure to the plan fiduciary. The alternatives considered are described in the subsections below.

10.1. Retaining Elements of the 2022 Rule

The Department considered retaining aspects of the 2022 rule, such as the tiebreaker provision or the consideration of participant preferences when selecting investment alternatives. However, while theoretically possible, the Department has been unable to document actual instances where competing investments equally serve the financial interests of the plan, suggesting that such a provision is either unusable, or vulnerable to abuse. Additionally, the Department was concerned that allowing plan fiduciaries to consider participants preferences could give the impression that plan fiduciaries may subordinate economic returns, resulting in the selection of investments with relatively poor financial performance or high fees. By removing these aspects of the 2022 rule, the Department believes it will prevent abuses that cause financial harm to plan participants.

10.2. Removing Paragraph (d)(2)(ii)(D)

The Department considered removing paragraph (d)(2)(ii)(D), which states that, when exercising or deciding whether to exercise shareholder rights, plan fiduciaries must "[e]valuate relevant facts that form the basis for any particular proxy vote or other exercise of shareholder rights." The Department considered removing this paragraph due to concerns that this provision may be misunderstood as requiring a plan fiduciary to evaluate every proxy proposal received, without consideration of the benefits or costs of doing so. No such unqualified obligation is imposed by the regulation.

However, the intent of the provision is to ensure that fiduciaries, in making informed proxy voting decisions, consider information that is relevant to a matter that is known or that is available to and reasonably should be known by the fiduciary. For example, as explained in the preamble to the 2020 final rule, if an ERISA-fiduciary client of a proxy advisory firm becomes aware of additional information from an issuer which is the subject of the firm's voting recommendation, under this paragraph the fiduciary would be expected to consider whether such

additional information is relevant.[225] This requirement safeguards against a fiduciary's blind reliance on recommendations provided by an advisor.

The Department believes the intent of this provision is clear, so it does not propose any changes. However, the Department solicits comments on whether changes to paragraph (d)(2)(ii)(D) would be helpful to avoid misinterpretations such as described above, or to better reflect the Department's intended purpose.

11. Uncertainty

Throughout the analysis above, the Department has acknowledged where it either lacks information to make an estimate or where there is significant uncertainty about how stakeholders would react to the proposed rule. The following discussions delve deeper into these areas of uncertainty.

11.1. Uncertainty Regarding the Number of Plans and Participants Affected

There is considerable uncertainty in the number of plans and participants that will be affected by this rule. To help illustrate this uncertainty, the Department conducted a sensitivity analysis to show how changing the number of plans requiring action beyond rule review would affect the estimated transition costs for plans of the proposed rule. As shown above in Tables 6 and 7, the one-year transition cost for plans is approximately $361.18 million. As shown in Table 11, a 10 percentage point increase or decrease in the number of plans affected would result in an estimated $23.14 million change in the transition cost for plans, and a 20 percent increase or decrease in the number of plans would result in an estimated $46.28 million change in the transition cost for plans.

Table 11.—*Sensitivity Analysis – 10-Percentage Point Change Intervals in Assumed Rate of Plans Impacted*

Sensitivity Levels	Number of Affected Plans by Action						Estimated Cost
	Rule Review	Investment Policy Review	Investment Changes	Plan Review of Revised Fund	Shareholder Engagement Policy Revisions	Plan Review of Fund Shareholder	

[225] 85 Fed. Reg. 81,668 (Dec. 16, 2020).

				Investment Policy		Engagement Policy	
80%	837,000	200,880	100,440	334,800	200,880	334,800	$314,902,566
90%	837,000	225,990	112,995	376,650	225,990	376,650	$338,040,538
Primary Estimate	**837,000**	**251,100**	**125,550**	**418,500**	**251,100**	**418,500**	**$361,178,509**
110%	837,000	276,210	138,105	460,350	276,210	460,350	$384,316,480
120%	837,000	301,320	150,660	502,200	301,320	502,200	$407,454,451

Note: Sensitivity levels reflect proportional adjustments to the Department's primary assumptions regarding the percentage of plans affected by certain actions. For example, a primary assumption of 30 percent for shareholder engagement policy revisions is adjusted to 27 percent under the 90 percent sensitivity scenario and 24 percent under the 80 percent scenario. No corresponding adjustment was made for actions taken by service providers on behalf of their client base. Therefore, some action counts and cost components remain unchanged across scenarios. See the Cost section for development of the primary estimate.

11.2. Uncertainty Regarding the Effect on How Shareholder Rights Are Exercised

There is significant uncertainty regarding how stakeholders would respond to the proposed rule's clarification that shareholder rights should be exercised only when doing so is in the economic interest of participants and beneficiaries. The resources that an investment manager or corporation dedicates to a proxy ballot or shareholder engagement depends on many factors, such as the size of the investment manager's stake in the corporation, the existing relationship between the investment manager and the corporation, and the nature of the issue at hand. As such, it is difficult to estimate a generalized cost associated with each proxy ballot or shareholder engagement, and by extension, it is difficult to estimate a generalized cost savings due to changes in how shareholder rights are acted on from this proposed rule.

In the Costs section, the Department presented an estimate of the potential cost savings investment managers may experience due to decreased time spent reviewing, researching, and voting on proxy statements. The estimate assumes that, on average, each investment manager would vote on proxy ballots for the 1,500 companies in the S&P 1500 Index and that the proposal would result in a 20 percent decrease in the time devoted to proxy-related activities.[226] This results in an estimated annual cost savings of $618.3 million.

[226] For a more complete explanation of the estimation methods, refer to the Costs section.

To demonstrate the uncertainty of this estimate, the table below presents a sensitivity analysis, varying two of the models inputs:

(1) The average number of proxy ballots voted by each investment manager: The sensitivity analysis considers the cost savings if, on average, each investment manager votes on proxy ballots for the 500 companies in the S&P 500 Index, the 3,000 companies in the Russell 3000 Index, or the approximately 4,000 companies in the total public market.

(2) The reduction in time devoted to each proxy ballot: The sensitivity analysis considers the cost savings if, on average, the proposal results in a 5 percent, 10 percent, 30 percent, or 40 percent decrease in time devoted to each proxy vote.

All other assumptions are kept constant. As shown below, by varying these two model inputs, the cost savings estimate could range between $51.5 million and $3.3 billion, annually.

Table 12.—*Sensitivity Analysis of Cost Savings due to Changes in Proxy Voting Behavior, in Millions of Dollars*

	Number of Proxy Statements Voted per Investment Manager			
	500	1,500 Primary Estimate	3,000	4,000
Percent Reduction in Time				
5%	$51.5	$154.6	$309.2	$412.2
10%	$103.1	$309.2	$618.3	$824.4
Primary Estimate: 20%	$206.1	$618.3	$1,236.7	$1,648.9
30%	$309.2	$927.5	$1,855.0	$2,473.3
40%	$412.2	$1,236.7	$2,473.3	$3,297.8

The Department also provides an estimate of the potential cost savings investment managers and publicly traded corporations may experience due to decreased shareholder engagement that were not likely to increase firm or shareholder value. While the Department assumes that 1,000 investment managers collectively conduct about 60 significant engagements each year, the Department has limited information on the engagement activities of smaller investment managers. Further, while the Department has some insight into the types of issues

addressed through shareholder engagement, only the investment managers themselves know whether they are pursuing such activities for economic reasons. Estimating the share of engagement activity that might decrease is further complicated by the fact that a single engagement often covers multiple topics. In such cases, an investment manager might stop raising noneconomic issues without reducing the number of engagements overall.

In the Costs section, the Department estimates that investment managers would save $254.0 million annually and publicly traded corporations would save $240.6 million annually due to decreased shareholder engagement. This is based on the assumptions that each investment manager conducts 60 significant engagements annually, on average, and that the proposed rule would reduce time allocated to engagements by 50 percent. To demonstrate the degree of uncertainty surrounding this estimate, the tables below present sensitivity analyses, varying the cost savings for investment managers and corporations by two of the models inputs:

(1) The average number of engagements each year, and

(2) The percentage of engagements ceasing due to the proposed rule.

All other inputs remained unchanged. As shown below, by varying these two model inputs, the cost savings estimate could range between $25.4 million and $1.8 billion for investment managers and between $24.1 million and $1.7 billion for corporations, annually.

Table 13.—*Sensitivity Analysis of Cost Savings for Investment Managers due to Changes in Shareholder Engagement Behavior, in Millions of Dollars*

	Percent of Engagements Ceasing		
	30%	50% Primary Estimate	70%
Average Annual Engagements per Investment Manager			
10	$25.4	$42.3	$59.3
30	$76.2	$127.0	$177.8
Primary Estimate: 60	$152.4	$254.0	$355.6
100	$254.0	$423.4	$592.7
200	$508.0	$846.7	$1,185.4
300	$762.0	$1,270.1	$1,778.1

Table 14.—*Sensitivity Analysis of Cost Savings for Corporations to Changes in Shareholder Engagement Behavior, in Millions of Dollars*

	Percent of Engagements Ceasing		
	30%	50%	70%
Average Annual Engagements per Investment Manager			
10	$24.1	$40.1	$56.1
30	$72.2	$120.3	$168.4
60	$144.4	$240.6	$336.8
100	$240.6	$401.0	$561.4
200	$481.2	$802.0	$1,122.8
300	$721.8	$1,203.0	$1,684.2

There is also uncertainty about whether resources no longer spent on shareholder activities would be retained as cost savings, whether investment managers would pass cost savings along to investors, and whether investment managers and corporations would redirect those resources toward other activities intended to increase firm or shareholder value. The Department has not attempted to estimate how much of the cost savings would be likely to be reinvested or what return firms or investment managers might realize from those investments.

The Department also notes a related source of uncertainty bearing on the proxy voting cost savings estimate presented above. On September 16, 2026, the SEC published a proposed rule, Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4,[227] which would rescind the federal requirement that companies include qualifying shareholder proposals in their proxy materials, leaving the question of whether such proposals must be included to be governed by state corporate law. Because many states do not have a state-law analog to Rule 14a-8's inclusion requirement, the volume of shareholder proposals reaching proxy ballots could decline independent of this proposed rule if the SEC's proposal is finalized. To illustrate the potential scope of this effect, the Department notes that Delaware, where a

[227] *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4*, 91 Fed. Reg. 59,904 (Sep. 21, 2026).

substantial share of publicly traded companies are incorporated, does not currently have a clear shareholder proposal rule.[228]

To the extent the SEC's proposal is finalized and reduces the overall volume of shareholder proposals, some portion of the cost savings estimated in Table 8 above may reflect a reduction in proxy-related burden that would occur regardless of this proposed rule, rather than savings attributable solely to the amendments proposed here. The Department's estimate in Table 8 should accordingly be understood as an upper bound on the cost savings attributable to this proposed rule with respect to proxy voting. The Department notes that a prior SEC rulemaking addressing proxy voting advice in this same regulatory area was vacated by the U.S. Court of Appeals for the D.C. Circuit, as discussed in the Baseline section above, and that the SEC's proposed rescission of Rule 14a-8 has not been finalized. The Department will evaluate the status of the SEC's rulemaking, and its effect on the baseline assumed in this analysis, when developing any final rule.

Throughout this analysis, the Department has requested comments in these areas of uncertainty to inform the analysis and to provide a better characterization of the proposed rule.

G. Paperwork Reduction Act

The proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 et seq.), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

Plans that change their investments to comply with the proposal may trigger the need to update several required disclosures. The information collections for the disclosures account for the burden of the required changes. Disclosures that may need updating include:

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[228] Council of the Corp. L. Section of the Del. State Bar Ass'n, *Corporation Law Council: White Paper and Discussion Draft for Revisions to the Delaware Law on Stockholder Proposals* (Nov. 9, 2026), https://sos.delaware.gov/wp-content/uploads/sites/14/2026/11/White-Paper-on-Stockholder-Proposals.pdf.

- OMB Control Number 1210-0090 Disclosures for Participant Directed Individual Account Plans (29 CFR 2550.404a-5). Participant-directed individual account plans, such as a 401(k) plan with participant-direction, are required to provide 404a-5 Participant Fee Disclosures at several specific points in time. These notices must be provided upon eligibility, 30-90 days prior to any change in the menu or fee structure, or at least annually.
- OMB Control Number 1210-0133 The Department's final rule under ERISA section 408(b)(2) (29 CFR 2550.408b-2) requires reasonable contracts or arrangements between employee pension benefit plans and certain providers of services to such plans include specified information to assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services.
- OMB Control Number 1210-0039 If a plan is amended to make a material modification in its terms or to change the information required to be contained in the SPD (other than a material reduction in covered services or benefits under a group health plan), section 104(b)(1) requires the plan administrator to furnish participants and beneficiaries receiving benefits a summary of the material modifications (SMM) within 210 days following the end of the plan year in which the change was adopted.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[229] imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of the Administrative Procedure Act[230] or any other law and that are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency determines that a proposal is

[229] 5 U.S.C. § 601 et seq. (1980).
[230] 5 U.S.C. § 553(b); 5 U.S.C. § 603(a).

not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an Initial Regulatory Flexibility Analysis (IRFA) of the proposed rule.

For purposes of analysis under the RFA, the Department considers a small entity to be an employee benefit plan with fewer than 100 participants.[231] The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued—at 29 C.F.R. 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10—certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans. Such plans include unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements. While some large employers may have small plans, in general small employers maintain small plans. Thus, EBSA believes that assessing the impact of these amendments on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA)[232] pursuant to the Small Business Act.[233] Therefore, the Department requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

The Department has determined that this amended rule will have a significant impact on a substantial number of small entities. However, due to uncertainty the Department has prepared

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[231] The Department consulted with the Small Business Administration's Office of Advocacy before making this determination, as required by 5 U.S.C. § 601(3) and 13 C.F.R. § 121.903(c). Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.
[232] 13 C.F.R. 121.201.
[233] 15 U.S.C. §§ 631-657r (2018).

an IRFA and invites comments, which would strengthen findings in a Final Regulatory Flexibility Analysis.

1. Need for Regulation

This proposed rule seeks to provide clarity, certainty, and permanency in how it directs plan fiduciaries to select investments and monitor activities related to the exercise of shareholder rights. The proposal deals with two broad topics: fiduciary duties of loyalty in selecting investments and investment courses of action, including selecting qualified default investment alternatives, and exercising shareholder rights, such as proxy voting, the use of written proxy voting policies and guidelines, and shareholder engagement.

The selection of investments and menus by plan fiduciaries is critical to the purpose of pension plans. The 2022 rulemaking allowed, in certain circumstances, for the use of nonfinancial factors, such as ESG considerations or plan participant demand, to be considered as part of the investment selection process. By clarifying the role of nonfinancial factors in the selection of investment options, plan fiduciaries will be less likely to choose investments that do not maximize the economic interests of the participants and beneficiaries in their retirement income or financial benefits under the plan. As a result, the proposed rule should increase expected financial outcomes for plan participants.

When exercising shareholder rights, plan fiduciaries must act exclusively with the purpose of promoting the economic interest of the plan, participants, and beneficiaries.[234] The proposed rule clarifies that plan fiduciaries must exercise prudence and diligence in the selection and monitoring of persons designated to exercise shareholder rights or otherwise advise on, or assist with, exercising all rights accompanying share ownership. This includes ensuring that any persons they select to exercise, advise on, or assist with shareholder rights acts in accordance with the economic interest of the plan.

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[234] *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 87 Fed. Reg. 73,822 (Dec. 1, 2022).

Most plans delegate the management of plan assets to investment managers,[235] and the Department is concerned that investment managers overseeing plan assets continue to devote resources to shareholder activities that are not focused on the economic interests of participants and beneficiaries. This clarification would preclude such activities. The Department expects that this would either result in cost savings for investment managers and publicly traded corporations or allow investment managers to reinvest these resources into activities that promote firm or shareholder value.

2. Affected Small Entities

The Department estimates the number of affected small plans as all retirement plans that held investments and reported fewer than 100 participants in their 2023 Form 5500 filing. Retirement plans are sponsored by employers in all business types, so this analysis does not discuss impacts by business type. The Department then applies the same assumptions presented in the RIA to estimate the number of small plans affected by each component of the proposed rule.

This proposed rule imposes direct compliance costs on plans to review the rule; update investment policy statements and policies and procedures related to exercising shareholder rights as needed; and change investments to comply with the proposed rule's requirements as needed. Most plans hire investment managers to carry out fiduciary investment management functions. For purposes of this analysis, the Department estimates these compliance costs at the plan level. To the extent service providers perform compliance-related activities on behalf of plans, the Department for its analysis treats those costs as paid by, or passed through to plans.

The proposed rule would also affect small entities responsible for investment decision-making for pooled investment vehicles held by 401(k) plans, such as investment vehicles registered under the Investment Company Act of 1940, CITs, pooled separate accounts, and

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[235] See the Affected Entities section of the RIA for a larger discussion.

other pooled investment vehicles. For purposes of this analysis, these entities are referred to as "investment managers." Small investment managers who act as ERISA fiduciaries would be directly affected by the proposed rule and are considered in this IRFA. However, investment managers that merely offer or manage investment products in which ERISA-covered pension plans may invest, but that do not act as ERISA fiduciaries with respect to plan assets, would not be directly regulated by the proposed rule. Such investment managers may experience indirect effects if plan fiduciaries change their investment selection or monitoring practices in response to the proposed rule; however, the Department does not explore those effects in this IRFA.

In the RIA, the Department estimates that approximately 1,000 investment managers would be affected by the proposed rule.[236] The Department does not have data on what proportion of these entities are ERISA fiduciaries. In this analysis, the Department uses the number of unique CIT sponsors of CITs held by large 401(k) plans as a proxy for the number of ERISA fiduciaries, or 600 CIT sponsors.[237]

To estimate the proportion of these entities that are small, the Department assumes that the size distribution of these entities is the same as the size distribution for the Portfolio Management and Investment Advice industry (NAICS 523940). According to the Small Business Administration, any entity in this industry with less than $47.0 million in receipts is small.[238] According to the Statistics of U.S. Businesses, approximately 96.6 percent of Businesses in NAICS code 523940 are small.[239] Based on this analysis, the Department estimates that approximately 580 small investment managers would be affected by the proposed rule. The Department believes that this approach overestimates the percent of affected investment managers that are small, as many of the small entities in this industry likely do not provide

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[236] For a full discussion on this estimate, refer to the Affected Entities section in the RIA.
[237] Departmental tabulations using BrightScope data for audited 401(k) plans.
[238] U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective Mar. 17, 2023), https://legacy.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.
[239] *Statistics of U.S. Businesses Annual Data Tables*, U.S. Census Bureau, https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html.

investment management services to ERISA-covered pension plans. The Department requests comments on this estimate and would appreciate data on the distribution of investment managers.

The Department expects that service providers will pass incremental compliance costs onto plans when possible. The resulting estimates of directly affected entities are presented in the table below.

Table 15.—*Affected Entities*

Entity	Affected Entities
Retirement Plans	735,000
Investment Managers	580

3. Impact on Small Entities

The discussions below explore how small plans and small investment managers may be affected by the proposed rule.

3.1. Impact on Small Plans

As described in the preamble and the RIA, the proposed rule will impose modest transitional costs on affected small plans, regardless of plan size. The anticipated cost for each plan will differ based on the required actions and whether the plan engages a service provider for help with compliance.

The Department has analyzed the costs for the different combinations of activities in relation to average plan assets for plans with less than 10 participants. These very small plans in terms of participant count also tend to be the smallest in terms of assets. Table 16 presents the results of this analysis. The estimates below reflect plan-level compliance costs and do not net out potential indirect effects on service providers or investment managers, potential pass-through of costs or cost savings through fees, or other indirect market effects.

Table 16.—*Impact on Small Plans*

Action(s) Required [a]	Proportion of all Affected Small Plans	Affected Small Plans	Cost Per Entity	Mean Assets, Plans with Fewer than 10 Participants	Cost as a Proportion of Mean Assets, Plans with Fewer than 10 Participants
Rule Review Only (SP)	60%	437,325	$9	$742,454	0.00%
Rule Review Only (IH)	11%	77,175	$938	$742,454	0.13%
Rule (SP) and Policies Review	13%	93,713	$384	$742,454	0.03%
Rule (IH) and Policies Review	2%	16,538	$1,313	$742,454	0.18%
Rule (SP) and Policy Review with Investment Changes	13%	93,713	$1,008	$742,454	0.14%
Rule (IH) and Policy Review with Investment Changes	2%	16,538	$1,937	$742,454	0.26%

[a] SP and IH are abbreviations for Service Provider and In-House provided rule review, respectively.

As Table 16 shows, most (60 percent) small plans will experience virtually no burden from this proposed rule. Further, only two percent of the affected population will likely experience the full burden associated with the rule, and that impact is estimated to be less than about one quarter of a percent of the average plan assets of plans with less than 10 participants. Impacts on larger plans will be even smaller.

3.2. Impact on Small Investment Managers

Similar to plans, the proposed rule will impose modest transitional costs on affected investment managers who act as ERISA fiduciaries, regardless of size. Directly affected investment managers would incur costs to review the rule, review and update investment policies, and review and update policies pertaining to shareholder rights and engagement. As in the RIA, the Department assumes that roughly two-thirds of investment managers will have cause to review their policies. Of this group of managers, it is further assumed that roughly three-quarters, or half of investment managers, will need to update their policies in order to remain viable investment managers for ERISA-covered pension plan assets. The table below shows the average per-entity cost by activity.

Table 17.—*Regulatory Flexibility Analysis, Costs Incurred by Investment Managers*

Action(s) Required	Proportion of Small Investment Fiduciaries Affected	Affected Small Investment Fiduciaries	Hours	Labor Cost	Average Per-Entity Cost
Rule Review	100%	580	5	$187.58	$937.90
Review Investment Policies	67%	389	8	$206.11	$1,648.88
Update Investment Policies	50%	291	16	$206.11	$3,297.76
Review Fund Proxy Voting Policy	67%	389	8	$206.11	$1,648.88
Update Fund Proxy Voting Policy	50%	291	16	$206.11	$3,297.76
Weighted Average per Entity Marginal Cost					$6,461.65
Maximum per Entity Marginal Cost					$10,831.18

In addition, the Department expects that the proposed rule would result in cost savings for these investment managers by allowing them to devote fewer resources to activities that do not promote the economic interests of plan participants and beneficiaries. The table below shows the average per-entity cost savings for investment managers. For more information on these estimates, refer to the RIA.

Table 18.—*Regulatory Flexibility Analysis, Cost Savings Realized by Investment Managers*

Source of Cost Savings	Small Investment Managers	Average Per-Entity Cost Savings
Decreased ESG-Related Research	580	$2,849
Decreased Resources Devoted to Proxy Voting	580	$618,330
Decreased Resources Devoted to Shareholder Engagement	580	$254,011
Total Per-Entity Cost Savings		$875,190

The table below illustrates how the net cost (i.e., costs minus cost savings) as a percentage of revenue varies across revenue thresholds for investment managers. It also shows the distribution of firms in the portfolio management industry by indicating the share of firms with revenue below each threshold. While this illustration assumes that the costs incurred by portfolio managers will be consistent across investment managers of different sizes, the Department recognizes that cost savings may not be experienced equally by investment

managers of different sizes. In the table below, the per-entity cost savings are assumed to be proportional to each revenue threshold, relative to the average revenue of firms in the portfolio management industry.

This analysis suggests that the costs incurred by investment managers are small, compared to the meaningful cost savings they may experience. The Department requests comments on how the costs and cost savings may be experienced by investment managers of different sizes and to what extent small investment managers are engaging in activities that would result in cost savings.

Table 19.—*Net Cost as a Percent of Revenue for Investment Managers*

Revenue Threshold	Share of Firms in the Portfolio Management Industry within Revenue Bin	Per-Entity Cost	Per-Entity Cost Savings [a]	Net Cost as a Percent of Revenue Threshold
$1,000,000	61.6%	$10,831.18	$67,407.05	-5.66%
$5,000,000	26.3%	$10,831.18	$337,035.26	-6.52%
$10,000,000	4.5%	$10,831.18	$674,070.52	-6.63%
$20,000,000	2.4%	$10,831.18	$1,348,141.04	-6.69%
$30,000,000	1.0%	$10,831.18	$2,022,211.55	-6.70%
$40,000,000	0.6%	$10,831.18	$2,696,282.07	-6.71%
$47,000,000	0.2%	$10,831.18	$3,168,131.44	-6.72%

[a] The Per-Entity Cost Savings column reflects estimated cost savings for an investment manager at each revenue threshold, assuming that cost savings are proportional to revenue relative to the average revenue of firms in the portfolio management industry. According to the 2022 Statistics of U.S. Businesses, the average revenue for firms in the portfolio management industry is $12.98 million. Accordingly, revenue thresholds below $12.98 million are assigned cost savings below the estimated average per-entity cost savings, while thresholds above $12.98 million are assigned cost savings above the estimated average per-entity cost savings.

4. Regulatory Alternatives

Regulatory Flexibility Act analyses typically consider small entity-specific alternatives, such as differing compliance requirements, timetables, specific small entity exemptions, or other scenarios listed in 603(c) of the Regulatory Flexibility Act.[240] The Department has considered whether any such size-differentiated alternatives are available here. Rules that impose new

[240] 5 U.S.C. § 603(c).

reporting, documentation, or procedural compliance obligations can often be tailored, delayed, or scaled to entity size without undermining the rule's purpose. This proposed rule, by contrast, restates and clarifies the fiduciary duty of loyalty that section 404(a)(1)(A) of ERISA already imposes on all plan fiduciaries, regardless of plan size.

The Department does not believe a small entity exemption, delayed timetable, or differing compliance standard would be appropriate or available in this context, because ERISA's duty of loyalty does not vary based on the size of the plan or its fiduciary. A small plan's fiduciary is subject to the same prohibition on subordinating participants' financial interests to collateral objectives as a large plan's fiduciary. Because the standards presented in the proposal are a restatement of those set forth in ERISA, there are no viable size-differentiated alternatives. This proposed rule is meant to remove any uncertainty surrounding the issue of non-financial consideration. The Department requests comment on whether there are size-differentiated alternatives relevant to this rulemaking that the Department has not considered.

5. Duplicate, Overlapping, or Relevant Federal Rules

The Department is issuing this amended rule under sections 404(a)(1)(A) and 404(a)(1)(B) of Title I under ERISA. The Department has sole jurisdiction to interpret these provisions as they apply to plan fiduciaries' consideration in selecting plan investment funds. Therefore, there are no duplicate, overlapping, or relevant Federal rules.

For the requirements relating to proxy voting policies, the Department is monitoring other federal agencies whose statutory and regulatory requirements overlap with ERISA. In particular, the Department is monitoring SEC rules and guidance to avoid creating duplicate or overlapping requirements with respect to proxy voting.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995[241] requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. This rulemaking is expected to have such an impact on the private sector. For the purposes of this rulemaking, the RIA meets the Unfunded Mandates Reform Act obligations.

J. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the states, the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.[242] Federal agencies promulgating regulations that have federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the proposed amendment.

In the Department's view, when finalized these amendments will not have federalism implications because they will not have direct effects on the states, the relationship between the National Government and the states, or on the distribution of power and responsibilities among various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the states as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the amendments when finalized do not alter the fundamental

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[241] 2 U.S.C. §§ 1501 *et seq.* (1995).
[242] *Federalism*, 64 Fed. Reg. 43,255 (August 9, 1999).

requirements of the statute with respect to employee benefit plans, and as such have no implications for the states or the relationship or distribution of power between the national government and the states.

Statutory Authority

This regulation is proposed pursuant to the authority in section 505 of ERISA (Pub. L. 93-406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp., p 332, and under Secretary of Labor's Order No. 1-2011, 77 FR 1088 (Jan. 9, 2012).

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Department is proposing to amend part 2550 of subchapter F of chapter XXV of title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135, sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 727 (2012) and Secretary of Labor's Order No. 1-2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2550.401c-1 also issued under 29 U.S.C. 1101. Sec. 2550.404a-1 also issued under sec. 657, Pub. L. 107-16, 115 Stat 38. Sec. 2550.404a-2 also issued under sec. 657 of Pub. L. 107-16, 115 Stat. 38. Sections 2550.404c-1 and 2550.404c-5 also issued under 29 U.S.C. 1104. Sec. 2550.408b-1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b-19 also issued under sec. 611, Pub. L. 109-280, 120 Stat. 780, 972. Sec. 2550.412-1 also issued under 29 U.S.C. 1112.

2. Amend § 2550.404a-1 by revising paragraphs (b)(4), (c), and (d)(2)(i) and(ii) to read as follows:

§ 2550.404a-1 Investment Duties

* * * * *

(b) * * *

(4) A fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. Whether any particular consideration is a risk-return factor depends on the individual facts and circumstances. The weight given to any factor by a fiduciary should appropriately reflect a reasonable assessment of its impact on risk-return.

(c) Investment loyalty duties. A fiduciary shall discharge his duties with respect to the plan with the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to financial interests of the participants and beneficiaries in their retirement income or financial benefits under the plan.

(d) * * *

(2)

(i) The fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right. When deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, shareholder engagement and any other related investment courses of action, fiduciaries must carry out their duties prudently and solely in the interests of the participants and

beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

(ii) When deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must:

(A) Act solely in accordance with the economic interest of the plan and its participants and beneficiaries, in a manner consistent with paragraph (b)(4) of this section;

(B) Consider any costs involved;

(C) Discharge their duties with respect to the plan with the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan;

(D) Evaluate relevant facts that form the basis for any particular proxy vote or other exercise of shareholder rights; and

(E) Exercise prudence and diligence in the selection and monitoring of persons, if any, selected to exercise shareholder rights or otherwise advise on or assist with exercises of shareholder rights, such as providing research and analysis, recommendations regarding proxy votes, shareholder engagement, administrative services with voting proxies, recordkeeping and reporting services, and all other rights accompanying share ownership.

* * * * *

Signed at Washington, D.C., this 20th day of November 2026.

Daniel Aronowitz,
Assistant Secretary,
Employee Benefits Security Administration,
U.S. Department of Labor

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