



U.S. DEPARTMENT OF LABOR

News Release

US DEPARTMENT OF LABOR RELEASES STATEMENT ON ENFORCEMENT OF ITS FINAL RULES ON ESG INVESTMENTS, PROXY VOTING BY EMPLOYEE BENEFIT PLANS

WASHINGTON, DC – The U.S. Department of Labor’s Employment Benefits Security Administration today announced that it will not enforce recently published final rules on “Financial Factors in Selecting Plan Investments” and “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.” The department released the announcement as an enforcement policy statement under Title I of the Employee Retirement Income Security Act of 1974.

Until the publication of further guidance, the department will not enforce either final rule or otherwise pursue enforcement actions against any plan fiduciary based on a failure to comply with those final rules with respect to an investment, including a Qualified Default Investment Alternative, or investment course of action or with respect to an exercise of shareholder rights. The department will update the Employee Benefits Security Administration’s website as more information becomes available.

“These rules have created a perception that fiduciaries are at risk if they include any environmental, social and governance factors in the financial evaluation of plan investments, and that they may need to have special justifications for even ordinary exercises of shareholder rights,” said Principal Deputy Assistant Secretary for the Employee Benefits Security Administration Ali Khawar. “We intend to conduct significantly more stakeholder outreach to determine how to craft rules that better recognize the important role that environmental, social and governance integration can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations.”

On Nov. 13, 2020, the department published a final rule on “Financial Factors in Selecting Plan Investments,” which adopted amendments to the “Investment Duties” regulation under Title I of ERISA. The amendments generally require plan fiduciaries to select investments and investment courses of action based solely on consideration of “pecuniary factors.” On Dec. 16, 2020, the department published a final rule on “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,” which also adopted amendments to the Investment Duties regulation to address obligations of plan fiduciaries under ERISA when voting proxies and exercising other shareholder rights in connection with plan investments in shares of stock.

The department heard from a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers and investment advisers that have asked whether these two final rules properly reflect the scope of fiduciaries’ duties under ERISA to act prudently and solely in the interest of plan participants and beneficiaries.

Stakeholders have also questioned whether the department rushed the rulemakings unnecessarily and failed to adequately consider and address the substantial evidence submitted by public commenters on the use of environmental, social and governance considerations in improving investment value and long-term investment returns for retirement investors. The department has also heard from stakeholders that the rules, and investor confusion about them, have already had a chilling effect on appropriate integration of ESG factors in investment decisions, including in circumstances that the rules may in fact allow. Accordingly, the department intends to revisit the rules.

Learn more about the Employee Benefits Security Administration and its work to protect employer-sponsored healthcare and retirement plans.

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