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DOL Rule Rolls Back Restrictions on Use of ESG Factors in Retirement Plans

The final rule allows private-sector retirement plans to consider environmental, social and governance factors when choosing investments

By Third Economy Staff, December 2022

On November 22, 2022, the U.S. Department of Labor ("DOL") adopted a new rule that permits retirement plan fiduciaries to consider climate change and other environmental, social and governance (ESG) factors when selecting investment options and exercising shareholder rights, such as proxy voting.

The Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights rule is primarily geared towards 401k and other ERISA-governed retirement plans and will replace the Trump-era rulemaking that made it more difficult to include sustainable investments in these plans. According to the DOL, the prior ruling "unnecessarily restrained plan fiduciaries' ability to weigh [ESG] factors when choosing investments, even when those factors would benefit plan participants financially (*DOL Press Release, 11/22/2022*)." In short, the DOL ruling has removed a major fiduciary roadblock to including ESG-focused investments on retirement plan menus.

"Today's rule clarifies that retirement plan fiduciaries can take into account the potential financial benefits of investing in companies committed to positive environmental, social and governance actions as they help plan participants make the most of their retirement benefits," said Secretary of Labor Marty Walsh. "Removing the prior administration's restrictions on plan fiduciaries will help America's workers and their families as they save for a secure retirement (*DOL Press Release, 11/22/2022*)."

This ruling is another key step towards recognizing ESG factors as financial risks and viewing ESG factors as an evaluation tool, like any other potential investment input. Additionally, the new rule calls back the prior administration's prohibition of the use of ESG funds as qualified default investment alternatives (QDIAs), which allows plan sponsors to select an ESG fund as the default option in automatic enrollment 401k-type defined contribution plans. Under the rule, standards applied to QDIAs are no different from those applied to other investments.

The rule will be effective 60 days after its upcoming publication in *the Federal Register*, except for certain proxy-voting provisions, which will be applied one year after publication.

Details:

Fact Sheet

https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-on-prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights

Department of Labor Press Release

https://www.dol.gov/newsroom/releases/ebsa/ebsa20221122

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