



Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
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Economically Targeted Investments (ETIs) and Investment Strategies that Consider Environmental, Social and Governance (ESG) Factors

The Employee Benefits Security Administration today released Interpretive Bulletin 2015-01 (IB 2015-01) to provide guidance on the investment duties of plan fiduciaries under the Employee Retirement Income Security Act (ERISA) when considering economically targeted investments (ETIs) and investment strategies that take into account environmental, social and governance (ESG) factors. IB 2015-01 is available on EBSA's website at dol.gov/ebsa.

Background

The Department has been asked periodically over the last 30 years to consider the application of ERISA's fiduciary rules to pension plan investments selected because of the collateral economic or social benefits they may further in addition to their investment returns. Various terms have been used to describe this and related investment behaviors, such as socially responsible investing, sustainable and responsible investing, environmental, social and governance (ESG) investing, impact investing, and economically targeted investing (ETI).

The Labor Department previously addressed issues relating to ETIs in 1994 in Interpretive Bulletin 94-1 (IB 94-1) and in 2008 in Interpretive Bulletin 2008-1 (IB 2008-1). The Department's stated objective in issuing IB 94-1 was to correct a popular misperception at the time that investments in ETIs are incompatible with ERISA's fiduciary obligations. The preamble to the IB explained that the requirements of sections 403 and 404 of ERISA do not prevent plan fiduciaries from investing plan assets in ETIs if the ETI has an expected rate of return that is commensurate to rates of return of alternative investments with similar risk characteristics that are available to the plan, 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 commenters have referred to this standard as the "all things being equal" test.

The Department has also consistently stated, including in IB 94-1, that ERISA plan trustees or other investing fiduciaries may not use plan assets to promote social, environmental, or other public policy causes at the expense of the financial interests of the plan's participants and beneficiaries in receiving their promised benefits. A fiduciary may not accept lower expected returns or take on greater risks in order to secure collateral benefits.

On October 17, 2008, the Department replaced IB 94-1 with IB 2008-01, codified at 29 CFR § 2509.08-01. IB 2008-01 purported not to alter the basic legal principles set forth in IB 94-1. Its stated purpose was to clarify that fiduciary consideration of collateral, non-economic factors in selecting plan investments should be rare and, when considered, should be documented in a manner that demonstrates compliance with ERISA's rigorous fiduciary standards.

The Department believes that in the seven years since its publication, IB 2008-01 has unduly discouraged fiduciaries from considering ETIs and ESG factors. In particular, the Department is concerned that the 2008 guidance may be dissuading fiduciaries from (1) pursuing investment strategies that consider environmental, social, and governance factors, even where they are used solely to evaluate the economic benefits of investments and identify economically superior investments, and (2) investing in ETIs even where economically equivalent.

Overview of Interpretive Bulletin 2015-01

In an effort to correct the misperceptions that have followed publication of IB 2008-01, the Department is withdrawing IB 2008-01 and is replacing it with IB 2015-01 which reinstates the language of IB 94-1. The new interpretative bulletin does not supersede the “investment duties” regulatory standard at 29 CFR § 2550.404a-1, nor does it address any issues that may arise in connection with the prohibited transaction provisions of ERISA.

IB 2015-01 confirms the Department’s longstanding view that plan fiduciaries may invest in ETIs based, in part, on their collateral benefits so long as the investment is appropriate for the plan and economically and financially equivalent with respect to the plan’s investment objectives, return, risk, and other financial attributes as competing investment choices.

The IB also acknowledges that in some cases ESG factors may have a direct relationship to the economic and financial value of the plan’s investment. In such instances, the ESG issues are not merely collateral considerations or tie-breakers, but rather are proper components of the fiduciary’s primary analysis of the economic merits of competing investment choices. When a fiduciary prudently concludes that such an investment is justified based solely on the economic merits of the investment, there is no need to evaluate collateral goals as tie-breakers.

In addition, consistent with the obligation of ERISA fiduciaries to choose economically and financially superior investments, the IB makes it clear that the Department does not believe ERISA prohibits a fiduciary from addressing ETIs or incorporating ESG factors in investment policy statements or integrating ESG-related tools, metrics and analyses to evaluate an investment’s risk or return or choose among otherwise equivalent investments. Nor do sections 403 or 404 prevent fiduciaries from considering whether and how potential investment managers consider ETIs or use ESG criteria in their investment practices. As in selecting investments, the plan fiduciaries must reasonably conclude that the investment manager’s practices in selecting investments are consistent with ERISA and the principles articulated in IB 2015-01.

Fiduciaries also do not need to treat commercially reasonable investments as inherently suspect or in need of special scrutiny merely because they take into consideration environmental, social, or other such factors. IB 2015-01 explains that the Department concluded that no special documentation is presumptively required for such investments. As a general matter, the Department believes that fiduciaries responsible for investing plan assets should maintain records sufficient to demonstrate compliance with ERISA’s fiduciary provisions. As with any other investments, the appropriate level of documentation would depend on the facts and circumstances.