U.S. Department of Labor Employee Benefits Security Administration
Washington, D.C. 20210

March 10, 2021

U.S. DEPARTMENT OF LABOR STATEMENT REGARDING ENFORCEMENT OF ITS FINAL RULES ON ESG INVESTMENTS AND PROXY VOTING BY EMPLOYEE BENEFIT PLANS

On November 13, 2020, the Department of Labor (Department) published a final rule on "Financial Factors in Selecting Plan Investments," 85 Fed. Reg. 72846 (November 13, 2020), which adopted amendments to the "Investment Duties" regulation under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). The amendments generally require plan fiduciaries to select investments and investment courses of action based solely on consideration of "pecuniary factors." On December 16, 2020, the Department published a final rule on "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," 85 Fed. Reg. 81658 (December 16, 2020), 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.

Executive Order 13990, titled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," directs federal agencies to review existing regulations promulgated, issued, or adopted between January 20, 2017 and January 20, 2021 that are or may be inconsistent with, or present obstacles to, the policies set forth in section 1 of the order. 86 Fed. Reg. 7037 (January 25, 2021). The policies set forth in the order include the promotion and protection of public health and the environment and ensuring that agency activities are guided by the best science and protected by processes that ensure the integrity of Federal decision-making. Section 2 of the order further provides that for any such regulatory actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.

The Department has heard from a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers, and investment advisers, who 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 those rulemakings were rushed unnecessarily and failed to adequately consider and address the substantial evidence submitted by public commenters on the use of environmental, social, and governance (ESG) 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 the rules, have already had a chilling effect on appropriate integration of ESG factors in investment decisions, including in circumstances that the rules can be read to explicitly allow. Accordingly, the Department intends to revisit the rules.

Until it publishes 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. This enforcement statement does not preclude the Department from enforcing any statutory requirement under ERISA, including the statutory duties of prudence and loyalty in section 404 of ERISA. The Department will update its website at https://www.dol.gov/agencies/ebsa as more information becomes available.