

LEGAL UPDATE

Proposal for Fiduciaries to Consider ESG Factors in Plan Management

On Oct. 13, 2021, the U.S. Department of Labor (DOL) [proposed a rule](#) that would allow plan fiduciaries to consider climate change and other environmental, social and governance (ESG) factors when they make investment decisions and exercise shareholder rights. Specifically, the rule clarifies the application of the **fiduciary duties of prudence and loyalty** under the Employee Retirement Income Security Act of 1974 (ERISA) when selecting plan investments and exercising shareholder rights, including proxy voting.

Key Proposed Changes

An important change included in the proposal is the addition of regulatory text, which clarifies that when considering projected terms, a fiduciary's duty of prudence may often require an evaluation of the economic effects of climate change and other ESG factors on the particular investment or investment course of action. The proposed change is complemented by three sets of examples that may be material to the risk-return analysis, depending on the facts and circumstances. In addition, the rule would:

- Remove the special rules for **qualified default investment alternatives (QDIAs)** that currently apply and would instead apply the same standards to QDIAs as apply to other investments.
- **Change the "tie-breaker" standard**, which permits fiduciaries to consider collateral benefits as tie-breakers in some circumstances, by replacing existing provisions with a new standard and removing special documentation requirements.
- Include three noteworthy changes to the current rules related to **exercises of shareholder rights**, including proxy voting.

A DOL [fact sheet](#) on the proposal is also available, which further details these key changes and provides the procedural background for the proposal.

Important Dates

May 20, 2021

Executive Order 14030 directed the implementation of policies to help safeguard the financial security of American businesses and workers from climate-related financial risk.

Oct. 13, 2021

Proposal issued to allow fiduciaries to consider ESG risks and rewards in investment decision-making.

Dec. 13, 2021

Expiration of public comment period for the proposal.

A fiduciary's duty of prudence may often require an evaluation of the economic effects of climate change and other ESG factors.



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