

Potential Impact of the Upcoming DOL Proxy Voting Requirement Effective Date

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PRACTICES ERISA and Other Benefits Litigation, Employee Benefits and Executive Compensation

Retirement plan sponsors should be aware of a special proxy voting requirement under the DOL's Final Plan Investment Duties Rule (the "**DOL Rule**") that goes into effect on December 1, 2023. Although the proxy voting requirement applies to investment managers of private investment funds that are subject to ERISA, rather than retirement plan sponsors, investment managers that choose to adopt new investment policies in accordance with the DOL Rule must reach out to their plan clients to obtain their acceptance of such policies. If a plan fiduciary is contacted for this purpose, the fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with ERISA before deciding to retain the investment manager.

As we previously reported [here](#), most of the provisions of the DOL Rule became effective on January 30, 2023 and generally provide that ERISA fiduciaries may consider environmental, social, and governance factors when selecting ERISA plan investments and exercising shareholder rights. With respect to the special proxy voting requirement, the DOL delayed the effective date to give plan fiduciaries that invest in ERISA private investment funds additional time to review any proxy voting policies of the investment manager.

Under the special proxy voting requirement, ERISA investment managers must reconcile, insofar as possible, any conflicting investment policy statements (which include a proxy voting policy) between their own internal policies and each investing plan clients' policies. As an alternative to this reconciliation requirement, the DOL Rule permits investment managers to instead develop an investment policy statement consistent with ERISA and require participating plan clients to accept the investment manager's investment policy statement, including any proxy voting policy, before such ERISA plans can continue to invest.

The DOL Rule is available [here](#).