

Proposed Rule Addressing Fiduciary Duties of Prudence and Exclusive Purpose with Respect to Proxy Voting and the Exercise of Shareholder Rights

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The DOL recently published a proposed rule (the “**Proposed Rule**”) that would amend the current investment duties regulations to provide guidance regarding how plan fiduciaries should exercise their duties of prudence and exclusive purpose with respect to proxy voting and the exercise of shareholder rights. Prior to the Proposed Rule, the DOL had addressed such fiduciary duties in sub-regulatory guidance and individual letters, which did not provide plan fiduciaries with consistent and clear guidance on how they must exercise their duties for proxy voting and other exercises of shareholder rights. Specifically, the Proposed Rule:

- Codifies the DOL’s long-standing position that plan fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan when deciding whether, and when, to exercise shareholder rights, including the voting of proxies;
- Provides a list of standards that plan fiduciaries must meet when exercising shareholder rights in order to meet their duties of prudence and exclusive purpose;
- Provides that a plan fiduciary must vote proxies only when the plan fiduciary prudently determines that the matter being voted upon would have an economic impact on the plan and prohibits such a vote unless the plan fiduciary has prudently made such a determination;
- Outlines certain “permitted practices” under which a plan fiduciary may adopt proxy voting policies that are reasonably designed to serve the plan’s economic interests; and
- Clarifies that plan fiduciaries must ensure that investment managers, proxy voting firms, and other advisors document the rationale for proxy voting decisions or recommendations sufficient to demonstrate that the decision or recommendation was based on the expected economic benefit to the plan.

The Proposed Rule also states that Interpretive Bulletin 2016-01, 29 C.F.R. 2509.2016-01, no longer represents the DOL’s view on the exercise of shareholder rights. The comment period for the Proposed Rule ends on October 5, 2020. The Proposed Rule is available [here](#). The DOL’s fact sheet is available [here](#). The DOL’s news release is available [here](#).