The DOL Announces a Non-Enforcement Policy on Final ESG Investment and Proxy Voting Rules

March 18, 2021

On March 10, 2021, the DOL released an enforcement policy statement (the ***Statement***), which announced that until the DOL publishes further guidance, it will not enforce the recently issued Financial Factors in Selecting Plan Investments final rule (the ***ESG Rule***) and the Fiduciary Duties Regarding Proxy Voting and Shareholder Rights final rule (the ***Proxy Voting Rule***, together with the ESG Rule referred to herein as, the ***Final Rules***). The ESG Rule generally required plan fiduciaries to select investments and investment courses of action based solely on consideration of pecuniary factors and the Proxy Voting Rule set forth a plan fiduciary's obligations when voting proxies and exercising other shareholder rights in connection with plan investments. The implementation of the ESG Rule in particular has caused concerns for plan fiduciaries about the use of environment, social, and governance considerations in its investment decisions and has been met with increasing criticism from a wide variety of stakeholders. In response, the DOL announced it will revisit the rules and that until further guidance is published, the DOL will not enforce the Final Rules or otherwise pursue enforcement policy actions against any plan fiduciary based on a failure to comply with the Final Rules. However, despite the Statement, plan fiduciaries should remain vigilant about the Final Rules requirements. Although the DOL will not enforce the Final Rules, they technically remain in effect. Further, the Statement only addresses enforcement actions by the DOL, which means that plan fiduciaries can still be subject to private causes of action and potential civil liability for breaches of fiduciary duty.

The Statement is available here.

© 2026 Haynes and Boone, LLP