Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Demand for investments that consider relevant environmental, social and governance (ESG) factors has been growing in recent years. With our commitment to responsible investing for over five decades, we are pleased to share the following overview of what the Department of Labor's (DOL) new ESG rule means.

What is the Department of Labor's new rule?

On November 22, 2022, the DOL released its final rule, **Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights**. The rule addresses ESG and proxy voting and clarifies how ERISA's fiduciary duties of prudence and loyalty apply to selecting investments (including investment options for plan menus) and exercising shareholder rights such as proxy voting.

The rule retains the core principle that the duties of prudence and loyalty require ERISA plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries to objectives unrelated to the plan.

Importantly, the rule adds new text stating that relevant risk and return factors a plan fiduciary may consider when selecting investment options **"may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action."**

In a nutshell, what does the rule mean for me and my clients?

The rule does not significantly change fiduciary duties related to the selection and monitoring of investments that include relevant ESG factors or strategies. That said, QDIAs are now subject to the same legal standards under the final rule as all other investments. Thus, plan fiduciaries may adopt QDIAs that include ESG factors or strategies when it is prudent to do so and without subordinating the interests of participants to objectives unrelated to the provision of benefits under the plan. The rule eliminates the special recordkeeping requirement under a "tie-breaker" standard. It also expressly clarifies that a plan fiduciary of a participant-directed individual account plan does not violate its duty of loyalty solely because the fiduciary takes into account participants' preferences when constructing a menu of prudent investment options.

What has changed from the previous DOL rule released in October 2020?

QDIA

The rule removes the prohibition on including QDIAs whose investment objectives, goals, or principal investment strategies include, consider, or indicate the use of one or more non-pecuniary factors. In removing the prohibition, the DOL stated that QDIAs would continue to be subject to the same legal standards under the final rule as all other investments, including the prohibition against subordinating the interest of participants and beneficiaries in their retirement income to other objectives.

"Tie-breaker" standard

The rule formulates a "tie-breaker" standard as allowing plan fiduciaries, who prudently conclude that competing investments "equally serve the financial interests of the plan over the appropriate time horizon," to consider collateral benefits as "tie-breakers" to make their selection. The rule removes the special documentation requirements imposed under the prior rule.

Participant preferences

The rule adds new text clarifying that a plan fiduciary of a participant-directed individual account plan does not violate its duty of loyalty solely because the fiduciary takes into account participants' preferences when constructing a menu of prudent investment options.

What is TIAA/Nuveen's view?

We are pleased the rule recognizes that ESG factors can play a critical role for people building their portfolios as they work hard to secure lifetime retirement income. The rule acknowledges that investors should have choice and that ESG factors are often important considerations that can affect investment outcomes. We will continue incorporating these factors into our investment processes to help make appropriate risk-adjusted decisions across asset classes and products in pursuit of attractive long-term returns.

Investments that integrate ESG factors may be prudent plan investment choices that offer competitive returns and the opportunity to manage additional risks as compared to funds that do not expressly consider ESG factors.

TIAA/Nuveen capabilities

We believe responsible investing informs better economic decisions with the potential to improve long-term returns, manage risk and uncover opportunity. Nuveen, A TIAA Company, manages $35 billion[1] of ESG-focused investment strategies that span all core asset classes. These strategies deploy both active and quantitative approaches relative to traditional market benchmarks. Additionally, the TIAA General Account which backs TIAA's flagship fixed annuity, TIAA Traditional, is committed to net zero carbon emissions by 2050.

Please reach out to your TIAA representative with any questions and visit the following to learn more:

nuveen.com/ri

tiaa.org/plansponsor-ri

[1] As of 9/30/22

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Responsible investing incorporates environmental social governance (ESG) factors that may affect exposure to issuers, sectors, industries, limiting the type and number of investment opportunities available, which could result in excluding investments that perform well.

You should consider the investment objectives, risks, charges, and expenses carefully before investing. Please call 877-518-9161 or log in to TIAA.org for current product and fund prospectuses that contain this and other information. Please read the prospectuses carefully before investing.

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