Policy Overview: Sustainable Investing in Defined Contribution Plans

While guidance and rules in relation to Employment Retirement Income Security Act (ERISA) governed pension plans in the United States have varied over the past several years, under the Biden administration, there appears to be an understanding of the validity of ESG considerations.

In October 2015, the US Department of Labor (DOL), under the Obama administration, rescinded a 2008 bulletin that had discouraged private sector retirement plan fiduciaries from considering environmental and social factors in the companies and funds in which they invest. In its place, the Department issued a new bulletin that assured that retirement plans subject to ERISA "need not treat commercially reasonable investments as inherently suspect or in need of special scrutiny merely because they take into consideration environmental, social, or other such factors."¹ The revised guidance provided reassurance to plan sponsors and fiduciaries who had questioned whether they could offer sustainable funds. It also allowed ERISA fiduciaries—and ultimately their plan beneficiaries—to benefit from additional analytical tools to assess risks, opportunities and impact of their retirement plans. Just as important, the decision freed investment professionals to exercise their judgement and expertise in the service of beneficiaries.

In April 2018, the DOL issued a lower level “field assistance bulletin” that generally reaffirmed its 2015 guidance while offering specific instructions on the Qualified Default Investment Alternative (QDIA).²

An October 2020 Trump administration rule would have required fiduciaries considering ESG factors in their retirement plans to supply additional documentation to justify why ESG factors are “pecuniary.” It also effectively prohibited ESG considerations in QDIAs. The proposed rule, which was opposed by 95 percent of firms and individuals who submitted comments to DOL³, provided no evidence that plan fiduciaries have inappropriately selected ESG investments or given up returns in exchange for ‘non-pecuniary' benefits.

In March 2021 the DOL, under the Biden administration, announced that it will not enforce the 2020 rule and instead will conduct “significantly more stakeholder outreach to determine how to craft rules that better recognize the important role that environmental, social and governance integration can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations.”⁴

In May 2021, the Biden administration issued an executive order that directed the DOL to propose new rules by September 2021 to replace the Trump-era rules.⁵

⁴ Department of Labor, Employee Benefits Security Administration, US Department of Labor Statement Regarding Enforcement of Its Final Rules on ESG Investments and Proxy Voting by Employee Benefit Plans, March 10, 2021