US SIF
The Forum for Sustainable and Responsible Investment

New Guidance for ERISA Governed Pension Plans Removes Doubts About Incorporation of Environmental, Social and Governance Factors

Secretary of Labor Thomas Perez provided welcome news and clarity in 2015 to fiduciaries of private sector retirement plans who wish to include investment options that consider environmental, social and governance (ESG) risks and opportunities.

In October, Perez announced that the Department of Labor was rescinding a 2008 bulletin that had discouraged investors 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 assures that fiduciaries of private sector retirement plans "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."

The revised guidance should thus provide reassurance to plan sponsors and fiduciaries who had questioned whether they could offer sustainable and responsible investing (SRI) options.

The new Bulletin acknowledges the growing consensus that fiduciary duty may compel fiduciaries to consider ESG factors in investment analysis and ownership practices. The updated guidance assures that "Consistent with fiduciaries' obligations to choose economically superior investments, the Department does not believe ERISA prohibits a fiduciary from addressing ETIs or incorporating ESG-related tools, metrics and analyses to evaluate an investment's risk or return or choose among otherwise equivalent investments."

Research by the US SIF Foundation documents that investments that considered environmental, social and governance issues were on the upswing even with the 2008 bulletin in place. At the start of 2014, $6.57 trillion in assets were held by US institutional investors and investment firms that review ESG risks and opportunities for their portfolio companies and funds. This $6.57 trillion represents one in six dollars under professional management in the United States today, up from one in nine dollars in 2012.

A number of prominent investment managers now specifically say they practice "ESG integration" as they perform investment due diligence analysis. Many of these asset owners and managers also use their votes and voices as shareholders to encourage their portfolio companies to improve the long term sustainability of their operations.

The Secretary of Labor's updated guidance to ERISA fiduciaries allows them—and ultimately their plan beneficiaries—to benefit from additional analytical tools to assess risks, opportunities and impact of their retirement plans. Just as important, it frees investment professionals to exercise their judgment and expertise in the service of beneficiaries. Two legal opinions on the new ERISA guidance can be found here.

US SIF and the US SIF Foundation offer resources to assist plan sponsors considering the addition of an (SRI) option to their defined contribution retirement plan. These include:

- SRI mutual funds offered by US SIF members: http://charts.ussif.org/mfpc/
- Performance studies: http://www.ussif.org/performance