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Regulation: Rollback of ESG Investing Restrictions

October 14, 2022

Regulation

The US Department of Labor (DOL) has sent a final rule to the White House for review that will allow retirement plan fiduciaries to consider ESG factors in their investment decisions. The amendment aims to uphold the policies established in the “Climate Crisis” **executive order** issued by President Biden in January 2021. The Acting Assistant Secretary for the Employee Benefits Security Administration praised the rule by stating that it "will bolster the resilience of workers' retirement savings and pensions by removing the artificial impediments—and chilling effect on environmental, social and governance investments—caused by” the prior rule. The change has met opposition from some in Congress, with Rep. Virginia Foxx, R-N.C., and Rep. Rick Allen, R-Ga., the minority leaders of the Education and Labor Committee, claiming that the changes were part of a "radical climate change and pro-union boss agenda" and that the " financial interests of workers and retirees should never take a backseat to the whims of the green lobby and big labor."

Taking the Temperature: On the one hand, the DOL rule is simply another aspect of the Biden Administration’s overall attempts to address the impacts of climate change, which includes requiring government agencies to consider climate-related issues in their decision making. The rule also likely reflects current practice for many retirement plan investment managers. After all, climate change impacts can create material investment risks and opportunities, and investment managers, in order to discharge their obligations on behalf of retirement plans, need to able to freely consider those impacts if they deem it appropriate in making investment decisions. On the other hand, the divergent reactions to the DOL rule highlight the increasingly politicized nature of climate change in the investment industry, as illustrated by decisions by some states’ financial officials to ban certain financial institutions from government transactions because of the financial firms’ perceived views on financing or investing in oil and gas projects. The ongoing schism over how climate change issues should be appropriately handled by the investment community is unlikely to subside any time soon and leaves asset managers in the position of having to walk a very thin line among those on different sides of the question.