December 20, 2021

DOL Proposed ESG Rule

On October 13, 2021, the U.S. Department of Labor (DOL) released a proposal under the Employee Retirement Income Security Act of 1974 (ERISA) to empower plan fiduciaries to safeguard the savings of America's workers by making it clear that fiduciaries may consider climate change and other environmental, social, and governance (ESG) factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations.

There was a 60-day public comment period on the proposed rule which:

- stated that climate change and other ESG factors may be considered;
- removed language from the 2020 rule that prohibited ESG from default plans, or QDIAs;
- clarified application of the tie-breaker test;
- removed provisions that may have dissuaded fiduciaries from proxy voting and exercising shareholder rights.

TIAA View

Overall, we are strongly supportive of the DOL's proposed amendments to clarify the duties that apply to ERISA retirement plan fiduciaries when selecting investments for plan menus and exercising shareholder rights such as proxy voting. In particular, we commend the DOL for proposing amendments that would give fiduciaries greater comfort and confidence in including ESG factors when evaluating investment options for plan menus and in proxy voting.

Responsible investing is in our DNA:

- We are leaders in responsible, sustainable investing – and have been for more than 50 years.
- We believe every American is entitled to a sustainable retirement built on sustainable investments.
- We have a strong conviction that actively managing ESG factors can enhance returns and reduce risk.
- We believe it is possible to achieve competitive investment returns and positively influence the environment, society and the wider economy over the long term.

For decades the DOL has stated there is a fiduciary duty to prudently evaluate and select investment offerings that drive performance for plan participants and this proposed ruling rightfully puts ESG factors on the same playing field as other investment considerations

Next Steps

On December 13, 2021 TIAA formally submitted comments to the DOL. Read full comment letter here.

In our comment letter, we applaud the DOL for proposing to remove the current prohibition on the inclusion of an investment as, or as a component of, a QDIA. We welcome the Proposal's addition of illustrative examples of ESG factors that "a fiduciary may consider in the evaluation of an investment or investment course of action is material to the risk-return analysis" and appreciate that the DOL is seeking to simplify the Proxy Voting Rule.

That said, we recommend the DOL clarify that pooled investment vehicles may rely on negative consent from existing investors for the managers' proxy voting policies

Once again, we commend the DOL on its thoughtful, collaborative approach to amending the Financial Factors Rule and the Proxy Voting Rule. We are pleased that the proposed rule reflects so many of the concerns and comments that have been expressed by industry stakeholders over the past year. We are also hopeful that the proposed rule would give plan fiduciaries a much greater level of confidence and clarity when they select plan investments and consider voting proxies on ESG-related issues. We encourage the DOL to establish a regulation that will ensure plan sponsors have the flexibility to design investment plan menus in a way that leads to the best interest and best possible outcomes for participants. We hope our comments above are helpful as the DOL works to finalize the proposed rule, and we welcome further engagement.

If you have any questions or would like to learn more about TIAA's approach to Responsible Investing, please contact your TIAA representative.