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## Department of Labor Announces Non-Enforcement Policy for Trump-Era ESG and Proxy Voting Rules

On March 10, 2021, the U.S. Department of Labor (DOL) released a much-anticipated [enforcement policy statement](#) that says it intends to revisit its recently published final rules on “Financial Factors in Selecting Plan Investments” and “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.” Until it publishes further guidance, the DOL will not enforce either rule or otherwise pursue enforcement actions against any plan fiduciary based on a failure to comply with those final rules with respect to an investment (including a qualified default investment alternative) or investment course of action or with respect to an exercise of shareholder rights.

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The statement does not offer any clear indications of how the DOL will modify these rules; however, it notes how commenters have raised the possibility that the rules may have been “rushed” and have had a “chilling effect” on investment activity, both of which may indicate the DOL will engage in a substantive rewrite or modification of the rules.

The DOL’s ESG final rule has created significant disruptions within the retirement and asset management communities since becoming effective on January 12, 2021, raising many questions and challenges for stakeholders trying to comply with the rule’s requirements. The DOL’s non-enforcement stance should allow asset managers and plan fiduciaries to pause their current work streams in response to these rules, but managers working to implement the EU’s ESG requirements should continue to make sure that any new disclosure on non-financial goals is not written in a way that may create issues for fiduciaries under the DOL’s historic approach to ESG. Moreover, the non-enforcement policy does not preclude the DOL from enforcing any statutory requirement under ERISA, including the statutory duties of prudence and loyalty in section 404 of ERISA, nor does it preclude participants from bringing private causes of action regarding the fiduciary’s investment selections and/or proxy voting decisions.

For details on the ESG final rule, please see our [prior Alert](#). Information about the proxy voting final rule can be found in our prior Alert [here](#).

If you would like to discuss the impact that the DOL’s latest statement may have on any aspect of your business, please feel free to reach out to any of the attorneys listed below.