



DOL Finalizes Rule on Shareholder Rights, Including Proxy Voting

December 22, 2020

On December 16, 2020, the DOL finalized a rule instituting standards for situations where fiduciaries exercise shareholder rights, such as voting proxies. As background, ERISA's investment duties regulation generally requires a fiduciary to act prudently when making decisions on investments. Sometimes, that duty involves the fiduciary having to vote on matters on behalf of plan shareholders (i.e., by proxy). The proposed rule provides guidance on the factors that fiduciaries should consider when exercising shareholder rights. (We discussed the proposed rule in the September 15, 2020, [edition](#) of *Compliance Corner*.)

The final rules substantially alter the proposed rules in a number of ways. First, in response to the many comments they received, the DOL takes a more principles-based approach in the final rules. In the proposed rule, the DOL required fiduciaries to act solely based on the economic interests of the plan and participants, only considering factors that will affect the economic value of the plan's investments. However, the DOL removed that requirement due to being persuaded that the complexity involved in a determination of economic versus non-economic impact could be costly. Instead, the final rule focuses on whether the fiduciary has a prudent and loyal process for proxy voting and other exercises of shareholder rights.

The final rule again confirms that fiduciaries do not always have to vote proxies or exercise every shareholder right. The rule does, however, provide a safe harbor provision that fiduciaries can use to satisfy their fiduciary obligations with respect to decisions on whether to vote proxies. Importantly, the DOL clarifies that these regulations do not apply to voting, tender and other rights that are passed through to participants in individual account plans.

As part of the final rule, the DOL removed Interpretive Bulletin 2016-01 and invalidated Field Assistance Bulletin 2018-01. The rule will become effective 30 days after the rule was published in the federal register (January 15, 2021), and it involves compliance dates in 2022. Plan fiduciaries should discuss this rule with their plan advisers to ensure that they are meeting their fiduciary obligations related to exercising shareholder rights.

[Final Rule: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights »](#)

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